



# NAVAL POSTGRADUATE SCHOOL

MONTEREY, CALIFORNIA

## THESIS

**HIDDEN THREATS: REFRAMING THE DEBATE ON  
DOMESTIC INTELLIGENCE IN AN AGE OF  
COUNTERTERRORISM**

by

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March 2013

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INTELLIGENCE IN AN AGE OF COUNTERTERRORISM**

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## ABSTRACT

The attacks of September 11, 2001, revealed a weakness in America's defense—it lacked sufficient predictive domestic intelligence to prevent terrorism. More than a decade later, the American policy community continues to debate the need for an independent domestic intelligence service focused on counterterrorism. Debate often centers on whether or not the United States *should* create an intelligence service independent of the Federal Bureau of Investigation. It has given less attention to *what* characteristics are expected in a service if one were created. The questions of *should* and *what* are naturally intertwined. The former, however, often focuses on system-based factors exogenous to the service: administrative structures, oversight mechanisms, information-sharing bodies, and national legal frameworks. Generally absent from this debate is an isolated, systematic, evaluation of ideal characteristics endogenous to a domestic intelligence service. With a decade of reflection behind us, reframing the debate may help inform discussion on counterterrorism intelligence in America—so we may understand not only what we lack, but also what we should seek.

Through an evaluation of literature on intelligence in democratic nations, and application of this evaluation to the post-9/11 discourse, this thesis identifies and analyzes characteristics deemed “ideal” in a service. It then tests these ideals in foreign security services often touted as models for America, in order to determine in what manner these characteristics exist, if at all. The study concludes by exploring lessons from this analysis to further inform debate, suggesting that the ideal characteristics expected in a domestic intelligence service are not only difficult to achieve in the modern counterterrorism environment, a strict pursuit of them may produce counterproductive results.

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## LIST OF ACRONYMS AND ABBREVIATIONS

7/7	July 7, 2005 (the terrorist attacks in London, England)
9/11	September 11, 2001 (the terrorist attacks upon America)
AFP	Australian Federal Police
APS	Australian Protective Service
ASIO	Australian Security Intelligence Organisation
ASIS	Australian Secret Intelligence Service
BFV	<i>Bundesamt Fur Verfassungsschutz</i> (Germany)
BSS	British Security Service (also known as MI5)
CIA	Central Intelligence Agency (U.S.A.)
CPA	Communist Party of Australia
CPNI	Center for the Protection of National Infrastructure (U.K.)
CSIS	Canadian Security Intelligence Service
DCRG	<i>Direction Centrale des Renseignements Généraux</i> (France)
DCRI	<i>Direction Centrale du Renseignement Intérieur</i> (France)
DFAT	Department of Foreign Affairs and Trade (Australia)
DG	Director General (Australia and U.K.)
DHS	Department of Homeland Security (U.S.A.)
DSD	Defence Signals Directorate (Australia)
DST	<i>Direction de la Surveillance du Territoire</i> (France)
ECHR	European Court of Human Rights
FBI	Federal Bureau of Investigation (U.S.A.)
FISA	Foreign Intelligence Surveillance Act (U.S.A.)
GCHQ	Government Communications Headquarters (U.K.)
HIA	Homeland Intelligence Agency (U.S.A.)
HUMINT	Human Intelligence
IB	Intelligence Bureau (India)
IGIS	Inspector General of Intelligence and Security (Australia)
IRA	Irish Republican Army

ISA	Intelligence Services Act (U.K.)
ISC	Intelligence and Security Committee (U.K.)
IT	Information Technology
JI	Jemaah Islamiyah
JIC	Joint Intelligence Committee (U.K.)
JTAC	Joint Terrorism Analysis Centre (U.K.)
KGB	Komitet Gosudarstvennoy Bezopasnosty (former Soviet Union)
MI5	Military Intelligence Section 5, or the British Security Service (U.K.)
MI6	Military Intelligence Section 6, or the Secret Intelligence Service (U.K.)
MP	Member of Parliament (Australia and U.K.)
MPSB	Metropolitan Police Special Branch (U.K.)
NCTC	National Counterterrorism Center (U.S.A.)
NISCC	National Infrastructure Security Coordination Center (U.K.)
NSAC	National Security Advice Center (U.K.)
NSB	National Security Bureau (U.S.A.)
NTAC	National Threat Assessment Centre (Australia)
ONA	Office of National Assessments (Australia)
PJC	Parliamentary Joint Committee (Australia)
PJCIS	Parliamentary Joint Committee on Intelligence and Security (Australia)
PJCA	Parliamentary Joint Committee on ASIO (Australia)
PSNI	Police Service of Northern Ireland (U.K.)
RG	<i>Renseignements Généraux</i> (France)
RCASIA	Royal Commission into Australian Security and Intelligence Agencies
RCIS	Royal Commission into Intelligence and Security (Australia)
RIPA	Regulation of Investigatory Powers Act (U.K.)
RUC	Royal Ulster Constabulary (U.K.)
SB	Special Branch (U.K.)
SIS	Secret Intelligence Service (U.K., also known as MI6)
SSA	Security Services Act (U.K.)
SSS	Swedish Security Service (Sweden)

TSU	Technical Support Unit (Australia)
TTIC	Terrorist Threat Integration Center (U.S.A.)
U.K.	United Kingdom
U.S.	United States
WMD	Weapons of Mass Destruction

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## I. INTRODUCTION

More than a decade after the attacks of September 11, 2001, the American policy community continues to debate the need for an independent domestic intelligence service in support of countering terrorism.<sup>1</sup> Debate has centered on whether or not the United States *should* create a service that is independent of the Federal Bureau of Investigation (FBI) and focused on domestic counterterrorism intelligence. It has given less attention to *what* characteristics are expected in a service if one were created. The two questions—*should* and *what*—are naturally intertwined. The debate over *should we?*, however, often resides in evaluation of federal administrative structures, congressional oversight mechanisms, community information-sharing bodies, and national legal frameworks—factors exogenous to the service. Generally absent from this deliberation is an isolated, systematic, evaluation of ideal characteristics endogenous to a domestic intelligence service. Years after the devastating events of 2001, now is an opportune time to reflect and reshape the debate, seeking to better define expectations for our security services and determine lessons for their use.

### A. FORWARD

The terrorist attacks of September 11, 2001, (9/11) revealed a weakness in America's homeland defense—it lacked predictive counterterrorism intelligence and needed security services better able to prevent terrorism. In the wake of 9/11, discussion of intelligence and security in America centered on the failure of intelligence and law enforcement agencies to share information, and on the lack of actionable information to

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<sup>1</sup> Matthew Johnson, "FBI's Intelligence Woes Restir Debate On an American MI5," *CQ Homeland Security On-line*, October 24, 2007 (accessed July 29, 2012) [http://newsbuster.com/Pages/Oct07/10\\_24\\_07\\_fbis\\_intelligence.html](http://newsbuster.com/Pages/Oct07/10_24_07_fbis_intelligence.html); Art Keller, "The Handcuff Handicap," *Foreign Policy Magazine*, September 19, 2012 (accessed October 2, 2012) [http://www.foreignpolicy.com/articles/2012/09/19/the\\_handcuff\\_handicap?print=yes&hidecomments=yes&page=full](http://www.foreignpolicy.com/articles/2012/09/19/the_handcuff_handicap?print=yes&hidecomments=yes&page=full); National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton and Company, 2004), Chapter 12, hereafter referred to as *The 9/11 Commission Report*.

help preempt attacks. In essence, the American security apparatus was presumed to have “failed to connect the dots,” and the “dots” that existed lacked the specificity necessary to facilitate interdiction of terrorists before they struck.<sup>2</sup>

Assessments varied on how to address America’s domestic security deficiencies. The national discourse included calls to create a new domestic intelligence service, one independent of the FBI and geared toward counterterrorism. Some, like FBI Director Robert Mueller and the 9/11 Commission, argued that a new service was not needed; the FBI could fill that role with reprioritization of its operations and a shift in culture away from enforcing laws toward collecting preventative intelligence.<sup>3</sup> Proponents of a new service, like Federal Judge William Posner and a 2002 joint Congressional inquiry, contended that the FBI was a reactive organization designed for the prosecution of crimes after they were committed; it could not easily become an intelligence agency geared to gather predictive counterterrorism intelligence.<sup>4</sup> Some, such as Senator John Edwards of

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<sup>2</sup> *The 9/11 Commission Report*, 352; Robert Bryant, et. al., “America Needs More Spies,” *The Economist*, July 10, 2003 (accessed May 9, 2012) <http://www.economist.com/node/1907776>. Per Bryant “[m]uch post-attack recrimination has focused on failures of ‘communication and information sharing’... There certainly was a lack of dot-connecting before September 11, but more important was the fact that the blizzard of information available for analysis was of such poor quality. There were too few useful dots.”

<sup>3</sup> Federal Bureau of Investigation, “FBI Responds to Call for Domestic Intelligence Agency,” September 14, 2006 (accessed August 10, 2012) <http://www.fbi.gov/news/pressrel/press-releases/fbi-responds-to-call-for-domestic-intelligence-agency/>; U.S. Senate Committee on the Judiciary, “Oversight of the Federal Bureau of Investigation: Hearing Before the Committee on the Judiciary, United States Senate, One Hundred Twelfth Congress, First Session, March 30, 2011,” (Washington, DC: U.S. G.P.O., 2012); Amy Zegart, *Spying Blind* (Princeton: Princeton University Press, 2007); *The 9/11 Commission Report*, 423–424.

<sup>4</sup> Richard Posner, *Remaking Domestic Intelligence* (U.S.A.: Hoover Institution Press Publication, 2005); Richard Posner, “The 9/11 Report: A Dissent,” *The New York Times*, August 29, 2004 (accessed October 2, 2012) <http://www.nytimes.com/2004/08/29/books/the-9-11-report-a-dissent.html?pagewanted=all&src=pm>; Gregory F. Treverton, *Reorganizing U.S. Domestic Intelligence: Assessing the Options* (Santa Monica, California: RAND Corporation, 2008), 2; The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Fourth Annual Report to the President and the Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (Washington, DC: RAND Corporation, 2002) (accessed September 13, 2012) <http://www.rand.org/content/dam/rand/www/external/nsrd/terrpanel/terror4.pdf>, hereafter referred to as *The Gilmore Commission Report*. Per the Gilmore Commission, “[t]he FBI’s long standing law enforcement tradition and organizational culture persuade us that, even with the best of intentions, the FBI cannot soon be transformed into an organization dedicated to detecting and preventing terrorist attacks... We recommend that the collection of intelligence and other information on international terrorist activities inside the United States, including the authorities, responsibilities and safeguards under the Foreign Intelligence Surveillance Act (FISA), which are currently in the FBI, be transferred to the [National Counterterrorism Center],” *The Gilmore Commission Report*, iii–iv.



North Carolina, went so far as to put forward official proposals for the creation of a new domestic intelligence service.<sup>5</sup> Others, including Harvard professor and former National Commission on Terrorism member Juliette Kayyem, argued that protection of civil liberties, not intelligence collection, should be the paramount consideration of the debate. For those such as Kayyem, the FBI could fit this agenda.<sup>6</sup>

Hoping to avoid disruption of ongoing security efforts, Washington decided to forgo creation of a domestic intelligence agency—provided the FBI could transform itself into an intelligence-centric (rather than post-crime investigation) service.<sup>7</sup> Furthermore, despite the recognized need for better intelligence, post-9/11 reforms emphasized creation of information coordinating bodies (the National Counter Terrorism Center and the Department of Homeland Security, among others) and intelligence community oversight mechanisms (the Director of National Intelligence). Ultimately, the emphasis was on the administrative system that oversaw connecting of the “dots,” rather than on identifying characteristics specific to, and improving, the services responsible for collecting them.<sup>8</sup>

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<sup>5</sup> U.S. Library of Congress, Congressional Research Service, *Report for Congress: Domestic Intelligence in the United Kingdom - Applicability of the MI-5 Model to the United States*, by Todd Masse, CRS Report RL31920 (Washington, DC: Office of Congressional Information and Publishing, May 13, 2003) (accessed October 5, 2012) <http://www.fas.org/irp/crs/RL31920.pdf>, 2–3. In 2003 Senator Edwards’ introduced a bill (S. 410 “Foreign Intelligence Collection Improvement Act of 2003”) that included creation of a Homeland Intelligence Agency (HIA). Nested into the Department of Homeland Security, HIA would assume the FBI’s and National Security Agency’s domestic intelligence roles and serve as the primary American domestic intelligence collection service. HIA would not have arrest powers.

<sup>6</sup> Council on Foreign Relations, “Does the United States Need a Domestic Intelligence Service?” November 17, 2006 (accessed July 18, 2012) <http://www.cfr.org/intelligence/does-united-states-need-domestic-intelligence-agency/p11990>. This piece includes a back-and-forth debate between Kayyem and Posner.

<sup>7</sup> Federation of American Scientists, “Final Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction,” March 31, 2005 (accessed August 14, 2012) <http://www.fas.org/irp/offdocs/wmdcomm.html>, hereafter referred to as the *WMD Commission Report*; Greg Miller, “FBI Gets a Broader Role in Coordinating Domestic Intelligence Activities,” *The Washington Post On-line*, June 20, 2012 (accessed October 2, 2012) [http://www.washingtonpost.com/world/national-security/fbi-gets-a-broader-role-in-coordinating-domestic-intelligence-activities/2012/06/19/gJQAtmupoV\\_story.html](http://www.washingtonpost.com/world/national-security/fbi-gets-a-broader-role-in-coordinating-domestic-intelligence-activities/2012/06/19/gJQAtmupoV_story.html); *The 9/11 Commission Report*, Chapters 3 and 12; Keller, “The Handcuff Handicap.”

<sup>8</sup> In 2004 the National Counterterrorism Center (NCTC) replaced the Terrorist Threat Integration Center (TTIC) as the central coordinating body for counterterrorism information. Gregory Treverton, *The Next Steps in Reshaping Terrorism* (Santa Monica, California: RAND Corporation, 2005), 10.

Nearly 12 years after 9/11, America continues to deliberate on the need for an independent domestic intelligence service in support of counterterrorism efforts.<sup>9</sup> In recent years, government officials, academics, and pundits have returned to the debate over the need for a service apart from the FBI. Despite the lack of catastrophic attack since 9/11, the persistent and changing specter of terrorism (highlighted by the 2009 “Underwear Bomber” and the attempted 2010 Times Square bombing), and lagging FBI reforms have reinvigorated review of America’s domestic security apparatus.<sup>10</sup> The question of “what kind of service is needed for better security?” is once again at the forefront. As terrorism expert Brian Michael Jenkins noted to Congress in June 2011, “[t]his is an appropriate time for a review. .As al-Qaeda has evolved, so must American strategy.”<sup>11</sup>

## **B. MAJOR RESEARCH QUESTIONS**

In order to evaluate whether or not the United States *should* establish an independent domestic intelligence service, it is first necessary to identify and assess characteristics specific to an ideal service, *if* such a service were created. Before engaging in another debate over whether or not America should create a new service, the government must first determine if a new service would complement the existing

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<sup>9</sup> Per the 9/11 Commission, “[c]ountering terrorism has become, beyond any doubt, the top national security priority for the United States,” *The 9/11 Commission Report*, 361. The following highlight the ongoing debate: Arthur S. Hulnick, “Home Time: A New Paradigm for Domestic Intelligence,” *International Journal of Intelligence and Counterintelligence*, 22:4 (2009) (accessed August 25, 2012) <http://dx.doi.org/10.1080/08850600902896902>; Council on Foreign Relations, “Does the United States Need a Domestic Intelligence Service?”; Federal Bureau of Investigation, “FBI Responds”; Johnson, “FBI’s Intelligence Woes Restir Debate”; Posner, *Remaking Domestic Intelligence*.

<sup>10</sup> On December 25, 2009, al-Qaeda affiliated and Nigerian born, Umar Farouk Abdulmutallab (the “Underwear Bomber”) attempted to detonate a bomb hidden in his underwear while on a flight from Amsterdam to Detroit, Michigan. The plot failed when the bomb malfunctioned. The New York Times, “Umar Farouk Abdulmutallab,” February 16, 2012 (accessed September 15, 2012) [http://topics.nytimes.com/top/reference/timestopics/people/a/umar\\_farouk\\_abdulmutallab/index.html?inline=nyt-per](http://topics.nytimes.com/top/reference/timestopics/people/a/umar_farouk_abdulmutallab/index.html?inline=nyt-per). On May 1, 2010, Pakistan born Faisal Shahzad attempted to detonate a car bomb in Times Square, New York City. The plot failed when nearby vendors noticed the vehicle smoking and notified the authorities. Chad Bray, “Times Square Plotter Gets Life Term,” *Wall Street Journal On-line*, October 5, 2010 (accessed September 15, 2012) <http://online.wsj.com/article/SB10001424052748704469004575533902050370826.html?mod=djemalertNYnews>.

<sup>11</sup> Brian Michael Jenkins, “Al Qaeda after Bin Laden,” Testimony Before the House Armed Services Committee, June 2011 (accessed June 4, 2012) [http://www.rand.org/content/dam/rand/pubs/testimonies/2011/RAND\\_CT365.pdf](http://www.rand.org/content/dam/rand/pubs/testimonies/2011/RAND_CT365.pdf).

apparatus in the manner desired. Therefore, the purpose of this study is to identify and analyze ideal characteristics that are specific to a service through a review of expert opinions in the post-9/11 writings, and then apply these findings to foreign case studies often held up as examples for America, in order to ascertain lessons for the U.S. model. To do so, this study will seek to answer three questions:

- 1) What are the ideal characteristics of a domestic intelligence service as indicated by the post-9/11 American discourse?
- 2) In what manner do these characteristics exist, if at all, in services often touted as models for a potential American service?
- 3) What lessons from those cases may further debate regarding creation of a service in the United States?

Through a review of the issues significant to domestic counterterrorism intelligence and analysis of the relevant literature, this study finds that (1) an evaluation of the post-9/11 American discourse on domestic intelligence reveals a desired set of endogenous characteristics that an service would ideally possess, and those characteristics include protection of civil liberties, collection of predictive intelligence aimed at combatting the unique threat of terrorism, and coordinating the resulting information across the national security community; (2) that these characteristics may be found in varying degrees, with varying impacts, in the two most relevant intelligence services frequently held up as potential models; and (3) that a qualitative evaluation of these cases, framed by the ideal characteristics outlined in the American discourse, offers lessons for re-evaluation of American domestic intelligence.

### **C. KEY ISSUES IN THE U.S. DOMESTIC COUNTERTERRORISM INTELLIGENCE DEBATE**

As noted above, the ongoing debate over American domestic counterterrorism intelligence has focused on the question of “should intelligence reforms include adding an independent domestic intelligence service?” The debate often centers on oversight mechanisms, legal frameworks, and coordinating bodies. The unanswered question is— “what characteristics would a new service possess if created?” Clarifying the *what* helps clarify the *should*. This study is rooted in the opinion that the debate should not only focus on the context in which a domestic intelligence service should operate but also on

the service itself, and that post-9/11 discourse identifies characteristics expected in an ideal service. Prior to examining the relevant literature in order to extrapolate characteristics the authors considered ideal, however, a study of this nature must account for the contextual issues that frame the discourse. Therefore, this section identifies the problems and issues that shape evaluations of the role, and ideal characteristics, of security services.

With regard to the purpose and characteristics of a domestic service, discourse on the future of American domestic intelligence revolves around three issues: (1) the role of intelligence in the democratic state and its impact on civil liberties; (2) counterterrorism as a unique mandate that requires a unique approach to intelligence collection; and (3) differences between intelligence and law enforcement cultures.

### **1. Intelligence in a Democratic State and its Impact on Civil Liberties**

Scholars and practitioners generally agree on how to define intelligence and its purpose. Central Intelligence Agency (CIA) veteran Arthur Hulnick defines intelligence as “information about a nation’s adversaries, enemies, or competitors or about threats to national security...designed to assist policy officials in formulating strategies or reaching decisions.”<sup>12</sup> Intelligence theorist Loch Johnson notes that “[t]he most valued intelligence provides actionable information, allowing policy officials to carry out operations with confidence, precision, and a high likelihood of success...” and “...the most difficult challenge of intelligence reporting is to include actionable information.”<sup>13</sup> In sum, the intelligence service may maximize its value to the state by anticipating threats, collecting predictive intelligence on those threats, and transmitting insight to officials capable of responding to the threats.<sup>14</sup>

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<sup>12</sup> Arthur S. Hulnick, *Fixing the Spy Machine* (Westport, Connecticut: Praeger Publishers, 1999), 5.

<sup>13</sup> Loch Johnson, “A Theory of Strategic Intelligence,” in *Intelligence Theory: Key Questions and Debates*, ed. Peter Gill (New York: Routledge, 2009), 47.

<sup>14</sup> Concepts from Erik J. Dahl, “Domestic Intelligence Today: More Security but Less Liberty?” *Homeland Security Affairs*, Vol. 7 (September 2011); Jennifer E. Sims, “Defending Adaptive Realism: Intelligence Theory Comes of Age,” *Intelligence Theory*, ed. Peter Gill, 154; Michael Warner, “Intelligence as Risk Shifting,” in *Intelligence Theory*, ed. Peter Gill, 16–32.

In a democracy, intelligence services operate under the direction of elected representatives. American services have been directed to collect intelligence at home and abroad. More than foreign operations, domestic intelligence activities require the government to balance security with democratic norms and civil liberties; the term “domestic intelligence” may carry nefarious implications. As security scholar Robert Jervis noted, “intelligence services are vital and troublesome.”<sup>15</sup> Intelligence requires secrecy, but democratic norms call for accountability and transparency. If unchecked, secrecy can undermine democratic institutions and threaten civil liberties.<sup>16</sup> Counterterrorism intelligence is of particular concern for a democracy, as Israeli Prime Minister Benjamin Netanyahu highlighted:

The governments of free societies charged with fighting a rising tide of terrorism are thus faced with a democratic dilemma: if they do not fight terrorism with the means available to them, they endanger their citizenry; if they do, they appear to endanger the very freedoms that they are charged to protect.<sup>17</sup>

Intelligence aimed at fighting terrorism may weaken democratic regimes. Per terrorism scholar Martha Crenshaw, the “government’s response to terrorism will diminish democracy more than the acts of terrorism itself.”<sup>18</sup> In response to terrorism, states curtail personal liberties in return for enhanced security. Enhanced security means erosion of civil liberties, which in turn disrupts the free and fair functioning of democratic civil society and erodes the legitimacy of the democratic government. An

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<sup>15</sup> Robert Jervis, “Intelligence, Civil-Intelligence Relations, and Democracy,” in *Reforming Intelligence: Obstacles to Democratic Control and Effectiveness*, eds. Steven C. Boraz and Thomas C. Bruneau, eds. (Texas: University of Texas Press, 2007), vi.

<sup>16</sup> Thomas Bruneau and Chris Matei, “Intelligence in the Developing Democracies: The Quest for Transparency and Effectiveness,” in *The Oxford Handbook of National Security*, ed. Loch Johnson (U.S.A.: Oxford University Press, 2010), 757.

<sup>17</sup> Quoted in James Burch, “A Domestic Intelligence Agency for the United States? A Comparative Analysis of Domestic Intelligence Agencies and their Implications for Homeland Security,” *Homeland Security Affairs* Vol. III, No. 2 (June 2007) (accessed august 29, 2012) <http://www.hsaj.org/?fullarticle=3.2.2,4>.

<sup>18</sup> Martha Crenshaw ed., *The Consequences of Counterterrorism* (New York: Russell Sage Foundation, 2010), 2.

ineffective response to a threat, however, is also detrimental to the state as it calls into question the state's ability to safeguard the citizenry.<sup>19</sup>

Protection of civil liberties is fundamental to maintaining the legitimacy of the democratic state. Abuse of civil liberties equates to violation of democratic norms, which causes a loss of public trust. Loss of public trust weakens democratic institutions. Naturally, public acceptance of infringements is proportional to the perceived threat. The greater the threat, the more open the public may be to restriction of liberties. Fluctuating threats may equate to inconsistent acceptance of restrictions, which frustrates development of long-term security policies. Per Jervis, "the gathering and use of intelligence in democratic or democratizing countries over the long run must rest on the consent and indeed support of the citizenry and powerful groups in society."<sup>20</sup>

Given the above context, evaluation of a domestic intelligence service's ability to support the democratic state should include assessment of the intelligence service's ability to protect civil liberties. Abuse of civil liberties by security services, however, is often a result of national legal and political processes. Per legal theorist D. J. McBarnet:

[a]ny gap between how the police should behave according to democratic principles and how they do is not simply a by-product of informal abuse and non-legal motivations among the police themselves . . . it exists in the law as defined in court decisions and statutes by the judicial and political elite of the state.<sup>21</sup>

This last point highlights the benefit of evaluating a service's ability to protect civil liberties based on internal characteristics such as public outreach programs (to

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<sup>19</sup> Concepts from Peter Chalk and William Rosenau, *Confronting the Enemy Within: Security Intelligence, the Police, and Counterterrorism in Four Democracies*, RAND Corporation (Santa Monica, California: RAND Corporation, 2004) (accessed July 18, 2012) <http://www.rand.org/pubs/monographs/MG100>, 76; Fernando Reinares, "Democratic Regimes, Internal Security Policy, and the Threat of Terrorism," *Australian Journal of Politics and History* 44, no. 3 (1998), 351–369. For related insight into democratic consolidation and transition, see Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation, Problems of Democratic Transition and Consolidation: Southern Europe, South America, and Post-Communist Europe* (Baltimore, MD: Johns Hopkins University Press, 1996).

<sup>20</sup> Jervis, "Intelligence, Civil-Intelligence Relations, and Democracy," xii.

<sup>21</sup> D.J. McBarnet, "Approaches to Intelligence and Social Science," in *The British Police*, ed. S. Holdaway (London: Edward Arnold, 1979); quoted in Peter Gill, *Policing Politics: Security Intelligence and the Liberal Democratic State* (Portland, Oregon: Frank Cass & Co., 1994), 62.

educate the public on its role and earn public trust) and internal oversight mechanisms, rather than solely on external factors such as national legal frameworks and congressional oversight.

## **2. Counterterrorism: A Unique Mandate for Security Services**

Following 9/11 the top priority of the U.S. security apparatus was countering the threat of terrorism.<sup>22</sup> Terrorism imposes unique burdens upon federal security services. It is different from the traditional Cold War-era security concerns for which the American intelligence enterprise was created. Terrorists, and their intentions, are harder to uncover. Terrorists do not offer fields of missiles or ships in port to photograph and analyze. Moreover, terrorist groups are clandestine, small, and insular, making penetration difficult.<sup>23</sup>

Although difficult to ascertain, terrorist actions can be predicted and interdicted with the right intelligence. Terrorists are rational actors; they weigh their decisions, evaluate the costs, and seek an identified end-state. Terrorists' primary goal is to influence the political system. Per Crenshaw, a perception of frustrated access to political mechanisms is a precondition for expression through violence.<sup>24</sup> In addition, according to scholar Donatella Della Porta, terrorists create an "alternative legal system" that rejects the conventional cycle of negotiation and reconciliation in favor of one that justifies the use of extreme tactics.<sup>25</sup> As rational actors seeking to participate in the political system (albeit nefariously and via an alternate system of norms), terrorists plan, prepare, and move toward an identified goal. As such, their activities may be interdicted with

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<sup>22</sup> Treverton, *Reorganizing U.S. Domestic Intelligence*, 104.

<sup>23</sup> Erica Chenoweth and Susan E. Clarke, "All Terrorism is Local: Resources, Nested Institutions, and Governance for Urban Homeland Security in the American Federal System," *Political Research Quarterly*, Vol. 63 No. 3 (September 2010), 495–507. For his part, Judge Richard Posner argued that countering terrorism requires the use of specialized resources and skillsets that are beyond the reach of local and state governments.

<sup>24</sup> Martha Crenshaw, "The Causes of Terrorism," in *The New Global Terrorism: Characteristics, Causes, and Controls*, ed. Charles W. Kegley Jr. (Upper Saddle River, NJ: Prentice Hall, 2003), 96.

<sup>25</sup> Donatella Della Porta, "Research on Individual Motivations in Underground Political Organizations" *International Social Movement Research* Vol. 4 (JAI Press Inc., 1992), 21.

appropriate intelligence on their intentions, motivations, and planned means to address their audience (e.g., bombings).

As intelligence theorist Jeffrey Norwitz contends, terrorism is a human-centric enterprise. Therefore, counterterrorism intelligence cannot be acquired remotely.<sup>26</sup> It must be acquired by human penetrations in direct contact with terrorists or their support network. Per Norwitz, human intelligence (HUMINT) is “unmatched in its ability to uncover this often private, subtle, and privileged information.”<sup>27</sup> Intelligence specialist Gregory Treverton took the point further, noting, “HUMINT is most valuable in terms of prioritizing the target for covert surveillance and/or gaining preemptive warnings of actual or latent threats to internal security...” and “...recruiting and training insiders for the purpose of counterterrorism is a time-consuming and expensive task.”<sup>28</sup>

In sum, terrorists are predictable and may be interdicted with the right intelligence. The unique, non-state and human-centric nature of terrorism dictates that HUMINT penetrations of terrorist networks are the most effective mechanism to acquire counterterrorism intelligence. Therefore, an evaluation of characteristics internal to a domestic security service must include assessment of the service’s ability to collect predictive intelligence, primarily via human penetrations of terrorist networks.

### **3. Organizational Culture: Differences between Intelligence and Law Enforcement Cultures**

With the nation’s security mandate turned toward counterterrorism, America sought intelligence that could be used to preempt terrorist threats. Post-9/11 intelligence

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<sup>26</sup> Jeffrey Norwitz, “Disrupting Human Networks: Ancient Tools for Modern Challenges,” in *Homeland Security and Intelligence*, ed. Keith Gregory Logan (California: Praeger, 2012), 219–220. Per Norwitz, interdicting human networks requires understanding of their ideology, leadership, operational environment (culture, social support networks, allies, and enemies), their logistics chain, and weaknesses in the group.

<sup>27</sup> Ibid., 219.

<sup>28</sup> Treverton, *Reorganizing U.S. Domestic Intelligence*, 35.



reforms sought to reprioritize the FBI's mission, placing predictive counterterrorism intelligence above criminal evidence collection. However, reforms may have been frustrated by the FBI's law enforcement culture.<sup>29</sup>

New Institutionalism theory outlined the importance of an institution's origins, structure, and goals upon its culture: the conditions that lead to the creation of a service will ultimately dictate its structure and goals; structures and goals will, in turn, dictate incentives for its members; combined, structure, goals, and incentives determine the service's culture.<sup>30</sup> Culture is developed apart from the system of organizations and leads to micro-cultures within the system; micro-cultures reinforce self-protecting norms and incentives that isolate one service from another. In the case of the FBI, its Special Agents form a unique sub-culture that promotes homogeneity by incentivizing a law enforcement, arrest-based, culture. In turn, the Special Agent culture is isolated from the intelligence collector and analyst cultures. Cultural gaps exist both within and between security services. Gaps hinder cross-body coordination, such as historically frustrated communication between the CIA (intelligence culture) and the FBI (law enforcement culture).<sup>31</sup>

Organizational culture—defined as the set of social, political, and bureaucratic norms of an institution that guide its operations—is difficult, if not impossible, to isolate from the structure and origin of the institution. Speaking to theories of intelligence, authors Glenn Hastedt and B. Douglas Skelley noted:

To change structure without an attention to culture is to invite failure just as surely as is the reverse, to change culture without an attention to structure...Complicating any reform effort is the reality that while organization structural changes can be put in place through legislation or fiat, cultural changes cannot.<sup>32</sup>

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<sup>29</sup> Garret M. Graff, *The Threat Matrix: the FBI at War in the Age of Terror* (New York: Little, Brown and Company, 2011), 496.

<sup>30</sup> Boraz and Bruneau, *Reforming Intelligence*, 3–4.

<sup>31</sup> Concept from Gill, *Policing Politics*, 239.

<sup>32</sup> Glenn Hastedt and B. Douglas Skelley, "Intelligence in a Turbulent World: Insights from Organization Theory," in *Intelligence Theory*, ed. Peter Gill, 127.

We may conclude that reforms aimed at changing security service cultures are unlikely to be successful. Per Hastedt and Skelley, culture “springs spontaneously from the interaction of those who work in organizations,” and cannot be altered by legislative reform.<sup>33</sup> Law enforcement models are often considered incommensurate with counterterrorism intelligence operations for three reasons. First, prosecution of crimes requires evidence—information is collected in response to criminal acts, not primarily for the prevention of future acts. Second, while terrorists conduct criminal acts, they are not necessarily career criminals (per Treverton, many terrorists “create only one spectacular crime, and then it is too late for intelligence to matter”).<sup>34</sup> Lastly, law enforcement models may incentivize arrest and prosecution over exploratory investigations. This culture requires that officers drop a lead if it cannot support prosecution, or make an arrest on lesser charges in lieu of pursuing more tenuous long-term penetrations of terrorist groups.<sup>35</sup>

It should be noted that some criminologists were less certain of law enforcement’s failings with regard to providing predictive information. For example, in their 1995 study of undercover police operations in Germany, scholars Heiner Busch and Albrecht Funk emphasized the potential “preventive crime fighting” ability of German police services that incorporated undercover human sources into their operations.<sup>36</sup> Similarly, in his assessment of Canadian police undercover operations, author Jean-Paul Brodeur conceded that use of undercover police sources might lead to prevention of crimes.<sup>37</sup> Nonetheless, governments task their police services to collect evidence and uphold the

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<sup>33</sup> Ibid.

<sup>34</sup> Treverton, *Reorganizing U.S. Domestic Intelligence*, 16.

<sup>35</sup> Henry Crumpton, “Intelligence and Homeland Defense,” in *Transforming U.S. Intelligence*, eds. Jennifer E. Sims and Burton Gerber (Washington, DC: Georgetown University Press, 2005), 207.

<sup>36</sup> Heiner Busch and Albrecht Funk, “Undercover Tactics as an Element of Preventive Crime Fighting in the Federal Republic of Germany,” in *Undercover: Police Surveillance in Comparative Perspective*, eds. Cyrille Fijnaut and Gary T Marx (The Hague: Kluwer Law International, 1995) 61, 67; *The 9/11 Commission Report*, 72.

<sup>37</sup> Jean-Paul Brodeur, “Undercover Policing in Canada: A Study of its Consequences,” in *Undercover: Police Surveillance in Comparative Perspective*, eds. Cyrille Fijnaut and Gary T Marx (The Hague: Kluwer Law International, 1995), 87.

law by supporting criminal prosecutions. This task requires adherence to legal due process, which requires proof of a crime, potentially de-incentivizing exploratory intelligence collection.

In sum, a law enforcement culture may stand in contrast to the intelligence-driven culture of services without arrest authorities. Intelligence services are tasked, structured, and incentivized to acquire information in support of predicting future decisions and actions. Therefore, evaluation of domestic intelligence services must account for their cultures. If not accompanied by intelligence collection-focused origins and mandates, law enforcement agencies risk reactive, rather than preventative, methods of operation that are incompatible with countering terrorism.<sup>38</sup>

#### **D. IDENTIFYING IDEAL CHARACTERISTICS THROUGH A REVIEW OF THE POST-9/11 LITERATURE**

The preceding section outlined the three key issues that frame evaluation of domestic intelligence services in the post-9/11 American milieu:

- 1) Domestic intelligence collection is problematic for America's constitutional democracy. It risks eroding civil liberties in pursuit of security, and infringements on liberty are weighed against public acceptance of the same. Evaluation of characteristics specific to a security *service* must account for its ability to earn public trust via internal mechanisms, rather than only account for constraints on the service from *system* functions such as legal and oversight frameworks.
- 2) Counterterrorism is a unique mission for security services and predictive counterterrorism intelligence is often best acquired through HUMINT. Therefore, evaluation of a service must consider its ability to collect predictive intelligence, primarily via human penetration of terrorist networks.
- 3) Predictive intelligence is best provided by a service with a culture of intelligence rather than law enforcement. Organizational cultures are difficult, if not impossible, to transform. Therefore, evaluation of a service should incorporate the service's origin, structure, mandate, and resulting culture.

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<sup>38</sup> Agnes Gereben Schaefer, "The History of Domestic Intelligence in the United States: Lessons for Assessing the Creation of a New Counterterrorism Intelligence Agency," in *The Challenge of Domestic Intelligence in a Free Society: a Multidisciplinary Look at the Creation of a U.S. Domestic Counterterrorism Intelligence Agency*, ed. Brian Jackson (Santa Monica, California: RAND Corporation, 2009), 24.

With the above context in hand, the focus of the following analysis is on reviewing the relevant literature and identifying characteristics that the post-9/11 authors dictate or imply should be present in a domestic security service. In order to do so, this section includes review of three bodies of literature: (1) official post-9/11 discourse, to include the commissions and congressional hearings that drove intelligence reforms; (2) debate among scholars and pundits over the need for a new service; and (3) post-9/11 studies that did not make final recommendations regarding the creation of a new service but offered extensive analysis of domestic intelligence services. The subsequent sections will exploit this analysis by isolating ideal characteristics endogenous to a domestic intelligence service, from which this study may evaluate services of other democratic nations and determine lessons for the American debate.

### **1. The Official Post-9/11 Discourse (Commissions and Hearings)**

In the years following 9/11, the U.S. government established commissions and held hearings to determine the faults that allowed the attacks to succeed. Washington created the National Commission on Terrorist Attacks Upon the United States, better known as the 9/11 Commission, which resulted in the Intelligence Reform and Terrorism Prevention Act of 2004. The Commission noted, "...the most serious weaknesses in [intelligence and security] agency capabilities were in the domestic arena."<sup>39</sup> The weakness stemmed from a failure of organizations to communicate with one another, and, more notably, to acquire intelligence that would have aided prevention of the attacks. In subsequent reforms the government focused on factors external to a service as it sought to interlace intelligence capabilities, enhance information sharing, and transform legal frameworks.<sup>40</sup>

When official discourse turned toward factors internal to a service—particularly in the 2002 *Fourth Report of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (Gilmore

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<sup>39</sup> *The 9/11 Commission Report*, 352.

<sup>40</sup> James Burch referencing the U.S. National Security Assessment, in James Burch, "Assessing the Domestic Intelligence Model and Process," in *Homeland Security and Intelligence*, ed. Keith Gregory Logan, 197.

*Commission Report*), the 2004 *9/11 Commission Report*, and the 2005 *Final Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (WMD Commission Report)*—official assessments highlighted the FBI’s law enforcement culture, and its repeated failure to transform into an intelligence-led culture, as cause for concern. For example, according to the *9/11 Commission Report*, the culture of the FBI did not “allow for aggregating and analyzing facts to see if they could provide clues to terrorist tactics more generally,” and generated a performance evaluation system measured in statistics of arrests, indictments, and convictions, rather than predictive intelligence.<sup>41</sup> Despite concerns, Washington rejected creation of a new service, favoring instead preservation of the FBI as lead domestic intelligence service. Proponents of this plan claimed that the FBI’s law enforcement-led culture, while not ideal, could be reformed into an intelligence-led service that would have the added benefit of being bound in laws that protected civil liberties. The government ultimately chose to nest intelligence elements inside of the FBI and directed the Bureau to revamp itself into an intelligence-driven culture.<sup>42</sup> Specifically, the 9/11, Gilmore, and WMD Commissions called upon the FBI to develop intelligence professionals, enhance its information sharing abilities, prioritize its resources toward counterterrorism intelligence, and cultivate “an institutional culture imbued with a deep expertise in intelligence and national security.”<sup>43</sup> As indicated by the official discourse, the ideal domestic service would prioritize counterterrorism while focusing on gathering predictive intelligence and building a culture that incentivized the same. It would also earn the public trust, promote oversight, and facilitate coordination of information with community counterparts.<sup>44</sup>

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<sup>41</sup> *The 9/11 Commission Report*, 74.

<sup>42</sup> *Ibid.*, 423–425; Peter Chalk and William Rosenau, “Intelligence, Police and Counterterrorism: Assessing Post 9/11 Initiatives,” *RAND Corporation*, October 30, 2003, accessed February 11, 2013, [www.rand.org/content/dam/rand/www/external/.../intelinputv2.pdf](http://www.rand.org/content/dam/rand/www/external/.../intelinputv2.pdf).

<sup>43</sup> *Ibid.*, 425–6; *The Gilmore Commission Report*; *WMD Commission Report*.

<sup>44</sup> White House, “The National Security Strategy of the United States,” Washington, DC, September 2009; *The 9/11 Commission*, 76, Chapter 3; *The Gilmore Commission Report*; U.S. Senate Committee on the Judiciary, “Oversight of the Federal Bureau of Investigation”; *WMD Commission Report*.

## **2. Debate among Scholars and Pundits Regarding the Need for a Domestic Intelligence Service**

The scholar and pundit debate over whether or not to create an independent service centered on three particular issues: (1) protection of civil liberties; (2) effectiveness of intelligence and law enforcement cultures for counterterrorism; and (3) information sharing between community counterparts.

### ***a. Protection of Civil Liberties***

Those in favor of a domestic service, the most vocal being Posner and former CIA officer Henry Crumpton, contended that the need for enhanced security outweighed concern over civil liberty infringements and that an intelligence service may be no worse at protecting liberties.<sup>45</sup> Regardless, they contended, if the service is effective at preventing terrorist attacks, the potential for erosion of liberties is warranted and will be acceptable to the populace.<sup>46</sup> Opponents, like Kayyem and the FBI, argued that law enforcement agencies are just as capable of acquiring predictive intelligence as intelligence agencies, and they are bound by processes and incentives to uphold the rule of law. They further reasoned that dressed in a cloak of secrecy, and free from rules of evidence, intelligence services are more likely to infringe upon civil liberties.<sup>47</sup> This argument may prove incorrect. For example, in his study of security policing, Britain's Peter Gill concluded that law enforcement, not intelligence agencies, were most likely to violate civil liberties due to their ability to manipulate the law at a tactical level.<sup>48</sup> As alluded to above, assessment of characteristics must include the service's adherence to laws and mandate, and its ability to protect civil liberties.

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<sup>45</sup> Crumpton was also the U.S. Department of State's Coordinator for Counterterrorism.

<sup>46</sup> Henry Crumpton, *The Art of Intelligence* (New York: Penguin Press, 2012); Crumpton, "Intelligence and Homeland Defense," 207; Posner, *Remaking Domestic Intelligence*. In addition to other assignments, Crumpton served as CIA liaison to the FBI and as Coordinator for Counterterrorism at the U.S. Department of State.

<sup>47</sup> Juliette Kayyem in Council on Foreign Relations, "Does the United States Need a Domestic Intelligence Service?"; Federal Bureau of Investigation, "FBI Responds."

<sup>48</sup> Gill, *Policing Politics*, 240.

***b. The Culture's Effectiveness in Preempting Terrorist Attacks***

Proponents of an independent intelligence service argued that, more than a law enforcement agency, an intelligence-focused service is better able to provide predictive intelligence that supports America's national mandate—to prevent terrorist attacks.<sup>49</sup> Crumpton summarized the argument: “[t]he United States has developed a robust system of national defense. The system, however, is just that—defensive. Despite its strengths, a good defense cannot eliminate the source of the threat. Our domestic security apparatus must include an offensive mechanism. That mechanism, however, would not be a law enforcement entity. Rather, it should be a domestic intelligence organization.”<sup>50</sup>

The above focus on intelligence is warranted. Earlier, this piece outlined the unique nature of terrorism and the need for counterterrorism agencies to acquire human sources within terrorist networks in order to uncover their intentions and prevent attacks. In *The Economist* article “America Needs More Spies,” a panel of former FBI and CIA seniors recommended the same: “[o]ur collective experience makes it absolutely clear that the only way to uncover and destroy terrorist activity is to penetrate the organizations engaged in it. And the best way to do this is to place spies in their innermost councils.”<sup>51</sup> For the preponderance of scholars and pundits reviewed, law enforcement cultures are reactive, unduly territorial, and operate in a system incentivized to promote arrests and convictions rather than long-term penetrations of terrorist organizations. Posner's position summarizes their concerns:

A law-enforcement approach to terrorism can cause intelligence data to be evaluated from the too-narrow perspective of its utility in building a criminal case; retard the sharing of information lest full credit for a successful prosecution be denied the field office that began the investigation; and discourage the collection and retention of information.<sup>52</sup>

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<sup>49</sup> *The 9/11 Commission Report*, 361.

<sup>50</sup> Crumpton, “Intelligence and Homeland Defense,” 198.

<sup>51</sup> Bryant, et. al., “America Needs More Spies.”

<sup>52</sup> Posner, *Remaking Domestic Intelligence*, 13–17.

Proponents of a new service viewed its primary role as preventing terrorist attacks. Ability to preempt attack, they claimed, is made more efficient by a culture that promotes, and incentivizes, intelligence collection. Opponents of an independent intelligence service argued that law enforcement operations require intelligence collection and police agencies have been running human sources—undercover officers and “confidential informants”—for generations. In this vein, Gill assessed that law enforcement models were able to deter aggression and promote security as effectively as intelligence models. Similarly, some authors, such as Chalk and Rosenau, noted that while the Bureau may have historically under-utilized HUMINT, only a few short years after 9/11 it had embraced “a culture of prevention” and addressed its agent operations accordingly.<sup>53</sup> The counterargument is that, regardless of their HUMINT skills, law enforcement agencies do not run intelligence sources longer than needed to make an arrest. This method equates to short-term gain and long-term counterterrorism failures. While some objected to the idea that intelligence-led cultures produced better counterterrorism intelligence, the vast majority of literature examined indicated otherwise: a domestic intelligence service would ideally prioritize counterterrorism and possess a culture that valued acquisition of predictive intelligence. Assessment of ideal characteristics, therefore, includes evaluation of a service’s culture of intelligence.

*c. Sharing Information between Community Counterparts*

Advocates of a new, independent, domestic intelligence service held that traditional law enforcement models inhibit information sharing between organizations. Per Posner, “within the [FBI], information is stored, retrieved, and simply understood principally through the conceptual prism of a ‘case’—a discrete bundle of information the fundamental purpose of which is to prove elements of crimes against specific potential defendants in a court of law.”<sup>54</sup> Opponents of an independent intelligence service claimed the opposite: organizations built for secrecy would be no better at sharing

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<sup>53</sup> Chalk and Rosenau, “Intelligence, Police and Counterterrorism: Assessing Post 9/11 Initiatives,” *RAND Corporation*, October 30, 2003, accessed February 11, 2013, [www.rand.org/content/dam/rand/www/external/.../intelinputv2.pdf](http://www.rand.org/content/dam/rand/www/external/.../intelinputv2.pdf), 5.

<sup>54</sup> *Ibid.*, 9.



information than those built for public arrest and prosecution. In recommending a hybrid law enforcement-intelligence model, Gill suggested, "...there should be no automatic assumption of the need for a security intelligence agency separate from the police. There are arguments for separating the two, but the problem of turf wars and poor (or non-existent) co-ordination is a strong argument for minimizing the number of different agencies."<sup>55</sup> In separating agencies, Gill found that governments inadvertently erected barriers to communication.

Arguments such as Gill's may fail to fully account for the divisions created by entrenched cultures. As Posner has noted, separation or combining of functions is irrelevant; the barriers between law enforcement and intelligence micro-cultures exist even if both cultures are housed in the same organization.<sup>56</sup> Per Hulnick, disparate organizational cultures create a natural wall between law enforcement and intelligence communities; nesting intelligence and law enforcement functions within the same organization would not enhance coordination.<sup>57</sup> In this view, the related recommendations of the WMD Commission and the 9/11 Commission (placing intelligence sections into the FBI) were fruitless. Conversely, if we concur with Gill's assessment, consolidation would indeed promote sharing.

In sum, the discourse elucidates the desire for a service to, ideally, facilitate communication with counterparts in the security community. Assessment of characteristics particular to a service, therefore, would include internal mechanisms to facilitate coordination of information across the intelligence community and with foreign liaison partners.

### **3. Studies that Made No Final Recommendation (the RAND Pieces)**

Five years after 9/11, the government tasked the Department of Homeland Security (DHS) to conduct "an independent study on the feasibility of creating a

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<sup>55</sup> Gill, *Policing Politics*, 240.

<sup>56</sup> Posner, *Remaking Domestic Intelligence*, 32.

<sup>57</sup> Hulnick, *Fixing the Spy Machine*, 99.

counterterrorism intelligence agency.”<sup>58</sup> In turn, DHS asked RAND Corporation to evaluate creation of a new domestic intelligence service. RAND was not tasked to offer summary judgment regarding policy or creation of a service. Rather, RAND sought only to help frame the discussion. In four lengthy pieces, RAND authors offered a comprehensive overview of domestic intelligence models, methods to evaluate the same, and valuable analysis that helps determine characteristics desired in an ideal service. Each of the RAND pieces took a similar look at domestic intelligence. The studies arrived at conclusions similar to the above official and scholarly viewpoints: the service’s should prioritize counterterrorism, an intelligence-led culture was preferable, the service needed to earn public trust and protect civil liberties, and the service’s ability to share information was important. Like most writers, the RAND authors paid particular attention to government structures such as oversight mechanisms, budget allocations, control measures, and existing legal frameworks. They did not entirely ignore features specific to a service, but offered less in this regard.<sup>59</sup>

Three RAND studies were particularly notable for this study. In *Considering the Creation of a Domestic Security Organization in the United States*, RAND contributors evaluated domestic intelligence services in Australia, Canada, France, Germany, and the United Kingdom based on several “focus areas”: the service’s mission; the leadership source (career or outsiders); the service’s external chain of command; the service’s structure; external oversight mechanisms; funding; national assessments of the service’s performance; and examples of controversies.<sup>60</sup> Similarly, in *Reorganizing U.S. Domestic Intelligence: Assessing the Options*, Treverton briefly assessed the above services, in addition to Sweden’s domestic service, in order to draw lessons for the American

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<sup>58</sup> Treverton, *Reorganizing U.S. Domestic Intelligence*, 2.

<sup>59</sup> Brian Jackson ed., *Considering the Creation of a Domestic Security Organization in the United States: Lessons from the Experiences of Australia, Canada, France, Germany, and the United Kingdom* (Santa Monica, California: RAND Corporation, 2009); Jackson ed., *The Challenge of Domestic Intelligence in a Free Society*; Chalk and Rosenau, *Confronting the Enemy Within*; Treverton, *Reorganizing U.S. Domestic Intelligence*, 3. Treverton strayed from the fold by noting that intelligence should be the organization’s primary focus, but a nested model may prove functional.

<sup>60</sup> Jackson ed., *Considering*, 10.

system.<sup>61</sup> Furthermore, in *Confronting the Enemy Within*, Peter Chalk and William Rosenau looked at the Australian, British, Canadian, and French systems.

*Considering*, *Reorganizing*, and *Confronting's* identification of potential evaluation criteria was particularly insightful for this study. As noted above, however, these pieces' thorough analysis was somewhat wanting in their robust focus on exogenous factors and intermingling of those factors alongside endogenous elements. In combining these characteristics into their final evaluation, the authors offered assessments that did not directly aid in isolating variables specific to a service. Combining service and system functions is natural as the two are deeply interlinked. Still, building assessments on a mix of characteristics both internal and external to a service makes drawing service-specific lessons and evaluating the utility of ideal characteristics and relevance of foreign models to the United States difficult.

## **E. IDEAL CHARACTERISTICS SPECIFIC TO A SERVICE**

As reviewed above, the preponderance of the post-9/11 literature centered on fixing the national systems within which the services operated (legal frameworks, federal authorizations, congressional oversight mechanisms, and state-level resource allocations). Attention to these factors is certainly warranted, but it is only half of the discussion. Tuning the system will be ineffective if the parts themselves do not function properly. Conversely, services may influence their environment, but in a democracy they cannot dictate the national system into which they are created and operate. When the post-9/11 literature engaged characteristics specific to the service rather than system, the discussion

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<sup>61</sup> In *Reorganizing U.S. Domestic Intelligence*, Treverton reviewed the Swedish Security Service (Sakershetspolisen), Germany's *Bundesamt Fur Verfassungsschutz* (BFV; Federal Office for the Protection of the Constitution), France's *Direction de la Surveillance du Territoire* (DST; Territorial Surveillance Directorate), the Canadian Security Intelligence Service (CSIS), the Australian Security Intelligence Organisation (ASIO), and the British Security Service (BSS or MI5). Treverton examined some of the services for the following factors, but not all services for each factor: Origin and History, Mission and Critical Capabilities, Leadership and Human Capital, Management and Process, Organizational Structure and Funding Patterns, Key Relationships with Intelligence and Law Enforcement Agencies, Oversight, Metrics for Performance, and Scandals and Abuses. In Jackson's *Considering*, multiple authors assessed ASIO, BFV, CSIS, DST, and MI5, in their related system context, on the same factors. In Chalk and Rosenau's *Confronting the Enemy Within*, the authors looked at ASIO, CSIS, DST, and MI5 with regard to countering terrorism, cooperation with law enforcement, and their susceptibility to oversight within their systems. Related, but outside of the RAND context, in "A Domestic Intelligence Agency for the United States?" Burch assessed ASIO, MI5, and India's Intelligence Bureau (IB) for system and service factors.

tended to anchor itself in presumptions about the balance of civil liberties and security as well as the benefits of opposing cultures.

As noted earlier, the purpose of this study is to identify ideal characteristics specific to a domestic intelligence service, to evaluate the presence of these characteristics in foreign services often held up as potential models for America, and to determine lessons for the U.S. discourse.<sup>62</sup> In furtherance of this aim, this study now asks, “what are the characteristics desired by the authors above, and how can they be assessed in a service?” Through the preceding literature review, four ideal characteristics endogenous to a domestic intelligence service, and the means to assess them, became apparent:

### **1. The Service’s Mission is Focused on Counterterrorism**

The post-9/11 literature, and official U.S. mandate, prioritized counterterrorism operations above other tasks of a domestic security service (e.g., counterespionage, counterproliferation, counternarcotics). Assessing a service’s prioritizing of functions requires more than reviewing the mission statement. For example, a clearly articulated mission is essential, but evaluation of a domestic service’s mandate may also include review of personnel and resource allocation, counterterrorism-specific training, and organizational incentives that promote counterterrorism operations. Notably, an intelligence service’s ability to remain focused on counterterrorism above other factors is questionable. Counterterrorism operations naturally include “lesser” missions, such as counterproliferation and counternarcotics. Five key areas offer avenues for qualitative evaluation of a service’s focus on counterterrorism:

#### ***a. Origin, History, and Present-day Mission***

As noted above, a service’s origin and history have a marked impact on its actions and focus. For instance, was the service designed to combat terrorism? If the

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<sup>62</sup> Concepts from Jackson ed., *Considering*.

service has a broad range of responsibilities such as countering espionage, weapons proliferation, and narcotics, do these missions feed into its counterterrorism mission or are they kept in separate departments?

***b. Counterterrorism-led Incentives***

In order to focus on counterterrorism, the service must incentivize the counterterrorism mission. For example, are promotions and awards based on counterterrorism successes or other missions? Do its leaders have counterterrorism experience? Does the service place a higher value on counterterrorism or other missions such as counterespionage?

***c. Resource Allocation within the Service***

Resource allocations offer empirical evidence of mission priorities. For example, are adequate resources in the form of funding and personnel given to missions aimed at combating terrorism? When funds, supplies, and officers are allocated, to what mission are they given? Is the service structured to focus on counterterrorism?

***d. Counterterrorism-centered Hiring and Training***

Each mission requires a specific skillset. Hiring and training offer evidence of a service's attention to a particular skillset. For example, does the service recruit a diverse range of officers that are linguistically, ethnically, and academically equipped to target terrorist networks? Does their training include counterterrorism related principles (e.g., running sources inside a terrorist network, background on terrorist organizations and their communications)?

***e. Attention to Transnational Threats***

Terrorism may be home grown or originate abroad. An effective counterterrorism service must account for both scenarios and incorporate an understanding of transnational threats into its operations. Evidence of this understanding may be found in the service's application of the term "terrorism" (for example, the FBI has been criticized for its bifurcation of terrorism into acts of domestic and foreign

origin), allocation of officers to units responsible for threats of a domestic and international origin, and record of addressing transnational issues.<sup>63</sup>

## **2. The Service's Primary Function and Culture is Intelligence-led**

The purpose of this study is not to assess the effectiveness of intelligence-led or law enforcement-led approaches, nor to determine if the two are fundamentally disparate and incompatible functions. Rather, it seeks to make assessments based on the post-9/11 discourse's expectations for a domestic intelligence service. According to the literature, in order to facilitate a mission of counterterrorism, the service should foster a culture that incentivizes collection of predictive intelligence. Being intelligence led means services, regardless of their policing role, would not evaluate officers primarily on their support to arrests and prosecutions, nor would law enforcement activities be held up as the standard bearer for the service's culture. Rather, the service must prioritize HUMINT (in this case, for counterterrorism), incentivize predictive intelligence production, value and allow for long-term operations, as well as direct hiring, training, and funding toward intelligence-specific tasks. Four areas offer avenues for qualitative evaluation of a service's intelligence-led culture:

### ***a. The Genesis and History of the Service***

As outlined above, the organization's origins help determine its culture. Therefore, a review of service beginnings and history should aid in assessment of its intelligence-driven culture.

### ***b. Intelligence-centered Hiring and Training***

Similar to assessment of the service's counterterrorism focus, evidence of a service's emphasis on predictive intelligence will include assessment of the service's

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<sup>63</sup> Speaking to the systemic problems that led to 9/11, former Secretary of State Condoleezza Rice noted, "[t]he problem, however, was not the absence of effort to counter the threat... One of its primary causes was the seam that existed between 'domestic' and 'foreign' intelligence." Condoleezza Rice, *No Higher Honor: a Memoir of My Years in Washington* (New York: Crown Publishers, 2011), 67–68. According to the FBI's definition, "[d]omestic terrorism is . . . entirely within the United States" and "without foreign direction." Federal Bureau of Investigation, "Terrorism: 2002–2005," (accessed May 11, 2012) <http://www.fbi.gov/stats-services/publications/terrorism-2002-2005>; Zegart, *Spying Blind*, 121.

hiring of officers with traits commensurate with a predictive, intelligence-led, mission (e.g., analytical abilities, ethnically diverse, linguistic abilities in key languages). It will also include evaluation of service training programs. For example, is intelligence collection the primary emphasis of instruction during new recruit training?

*c.        **Emphasis on HUMINT***

As noted earlier, predictive counterterrorism intelligence often relies upon HUMINT. Therefore, evaluation of a service's intelligence-led culture should also include assessment of the service's focus on HUMINT. For example, do service training, officer selection, resources, and official statements reflect an emphasis on HUMINT operations?

*d.        **Intelligence-led Incentives***

Hand-in-hand with its counterterrorism mission, the ideal service would incentivize intelligence collection. For example, does service leadership incentivize predictive intelligence? Is intelligence collected in support of long-term operations or does it do so in support of short-term gain for law enforcement operations? Are officers rewarded more for long-term intelligence missions or for support to criminal prosecutions?

**3.        The Service Seeks to Acquire and Maintain Public Trust as a Mechanism to Support Protection of Civil Liberties**

The literature, in particular the academic and pundit debates, indicated that services should help protect civil liberties. Protection of civil liberties, however, is a complicated matter that is difficult to measure and is often dictated by external factors such as national legal frameworks. As noted above, the public will ultimately determine what is acceptable with regard to limits on liberty. Therefore, qualitative evaluation of service characteristics may focus on the service's adherence to lawful mandate and the mechanisms it employs to earn public trust for its agenda and activities. For example, assessment of this characteristic may include evaluation of service outreach efforts (such as advertising of mission and role), internal control mechanisms (such as ethics boards),

as well as abuse scandals and responses to the same. Five areas offer avenues for qualitative evaluation of a service's ability to acquire and maintain the public trust:

**a. *Openness Policies and Public Outreach Efforts***

Engaging the public is essential to earn their trust for the service's agenda, tactics, and intentions. For example, does the service have a public affairs office? Does the service advertise its mission, tactics, budget, and use of resources? Are its seniors responsive to inquiries from the public, academia, and the press?<sup>64</sup>

**b. *Hiring Practices***

In order to earn public trust, a service must represent its citizenry. For example, are the service's hiring practices considered fair and open? Does the service hire minorities in a manner commensurate with the larger population, which may enhance public trust by binding the service to the constituency (avoiding an "us versus them" mentality)?<sup>65</sup>

**c. *Support to Oversight and Control Mechanisms***

Protection of civil liberties is often measured in the broader system as mechanisms of control and oversight by the executive, legislative, and judiciary branches. These measurements, however, are all external to the service, and most often *reactive* (oversight may not come into play until after a violation). As defined by Naval Postgraduate School professor Thomas Bruneau, internal control is "the internal oversight mechanisms such as inspector generals, general counsels, ethics boards, and the like, but also the professionalization of those who work in the intelligence activity."<sup>66</sup>

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<sup>64</sup> Exposure of the organization's budget to public scrutiny serves to enhance public trust by allowing for enhanced transparency and meaningful debate. That said, the amount of detail provided to the public may be determined by the government, not the service. Aidan Wills, "Financial Oversight of Intelligence Services," in *Overseeing Intelligence Services: A Toolkit*, eds. Hans Born and Aidan Wills (Geneva, Switzerland: DCAF, 2012), 151–180.

<sup>65</sup> Concept from Gill, *Policing Politics*.

<sup>66</sup> Concept and quote from Thomas Bruneau, "Controlling Intelligence in New Democracies" in *Strategic Intelligence: Windows Into a Secret World*, eds. Loch Johnson and James Wirtz (Los Angeles: Roxbury Publishing Company, 2004), 448–449; Thomas Bruneau, "Control of Intelligence Activities in the United States" (Monterey, California: Naval Postgraduate School), unpublished, 16.



Therefore, this study will assess the service's internal activities that support oversight and control. For instance, does the service have an internal auditor? Does the service provide regular reports to an external oversight panel? Does it support development of oversight mechanisms?

***d. Actions that Violated Mandate and Impacted Public Trust***

Although the broader intelligence apparatus and legal framework confine the service's actions through laws, directives, and mandate, the service has an obligation to carry out its mission within established parameters. Operations conducted outside of the explicit or implicit limits prescribed by the system damage the service's ability to hold the faith and trust of the public. Measuring the service's violation of mandate and actions that impact public trust may include review of the service's actions, official and media criticism of the service, and the service's formal and informal policies with regard to statutes and mandates.

***e. Public Opinion of the Service***

Public opinion of the service will impact its ability to earn and maintain the public trust. Accurately measuring public opinion is difficult, but may be partially conducted by a review of public opinion polls, media coverage, and notable repercussions—such as the service's ability to hire key demographics—that reflect public opinion of the service.<sup>67</sup>

**The Service Shares Information and Collaborates with its Community Counterparts**

All of the literature reviewed held that a domestic intelligence service must share information and coordinate with intelligence community partners (local, federal, and international). Assessment of a service's ability to share information and coordinate

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<sup>67</sup> Concept from Genevive Lester, "Societal Acceptability of Domestic Intelligence," in *The Challenge of Domestic Intelligence in a Free Society*, ed. Brian Jackson, 97. Public opinion polls have limitations. The response to polling inquiry depends heavily on how the question is framed and who is asked. Furthermore, the public response may vary markedly as dictated by the proximity to, or perception of, the threat. For example, immediately following 9/11 more people were willing to have their liberties restricted than they are 10 years later.

operations may include evaluation of the service's detailing of officers to counterparts for liaison duties, establishment of offices responsible for coordination, and use of administrative systems that facilitate dissemination of intelligence across agencies.<sup>68</sup> Four areas offer avenues for qualitative evaluation of a service's ability and willingness to share information and collaborate with its community partners:

***f. Work with Community Partners***

To be effective a domestic counterterrorism intelligence service should work closely with its intelligence and law enforcement partners. Evaluation may include a review of the service's engagement with foreign liaison as well as national partners through assessment of the service's operational history, public statements, resource allocation, and officer priorities.

***g. Secondments and Regional Offices***

In order to better coordinate counterterrorism operations, a service may assign its officers to sister services and allow its counterparts the same opportunity within its ranks. It may also establish offices outside of its main headquarters as a means to directly engage local law enforcement and foreign counterparts.<sup>69</sup>

***h. Support to Coordinating Bodies***

Similar to secondments and regional offices, a service will likely be called upon to support or host counterterrorism and intelligence coordination bodies. For example, does the service have an office responsible for coordination? Does the service support or host an element responsible for coordinating information?

***i. The Service's Missteps***

Evaluation of a service's collaboration and information sharing efforts should include areas where the service failed, or had difficulty, completing this portion of

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<sup>68</sup> Concepts from Trevorton, *Reorganizing U.S. Domestic Intelligence*, 46.

<sup>69</sup> On communication, Secretary of State during 9/11, Condoleezza Rice, said one fault of the FBI was that it, "...was very decentralized with less-than-optimal communication between the powerful field offices and national-level officials" (Rice, *No Higher Honor*, 68).

its mission. A key component of this variable is the value the service places on coordination and cooperative behavior. Per Treverton, this value includes incentivizing information sharing and cooperative actions, and linking these to the success of the organization.<sup>70</sup> For example, is coordination within and outside of the service valued by the organization, or does the service value secrecy over cooperation? Does the service dedicate adequate personnel, supplies (e.g., computer systems), and funding to coordination efforts? Where has the service failed to coordinate or enhance its relationships with counterparts?

## **F. CONCLUSION**

This chapter has explored literature relevant to the debate over creation of a domestic intelligence service in America after 9/11 and identified characteristics desirable in a domestic service. According to this post-9/11 discourse, a service would ideally focus on counterterrorism, be intelligence driven, acquire and maintain the public trust, and coordinate with its national security counterparts. These service-specific characteristics can overlap and intertwine, and they may appear in varying degrees of influence; hence, they lend themselves to qualitative rather than quantitative assessment. Through the methodology and structure presented below, this study will qualitatively evaluate these characteristics within two services consistently cited as exemplars for the United States, in search of lessons for the American debate.

### **1. Methodology for Evaluation of Case Studies**

As already outlined, this thesis explores the idea that any determination of the need for an American domestic intelligence service must include an isolated assessment of the characteristics endogenous to a service. The study began by hypothesizing that an evaluation of the post-9/11 American discourse on domestic intelligence would reveal a set of ideal characteristics specific to a domestic service (i.e., isolated from the broader system in which the service would sit). Drawing on primary and secondary sources, the above sections endeavored to answer the study's first research question: what are the

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<sup>70</sup> Treverton, *Reorganizing U.S. Domestic Intelligence*, 46.

essential, endogenous, characteristics of an ideal domestic intelligence service as indicated by the post-9/11 American discourse? The four ideal characteristics detailed above now serve as the yardstick for an assessment of case studies in order to extract lessons to further the American conversation on domestic intelligence. Table 1 depicts the format for evaluation.

Table 1. Format for Evaluation of the Case Studies.

CHARACTERISTIC		AREAS OF EVALUATION	
1	Counterterrorism as the Service's Mission	1.A	Origin, history, and mission
		1.B	Counterterrorism-led incentives
		1.C	Resource allocation within the service
		1.D	Counterterrorism-centered hiring and training
		1.E	Attention to transnational threats
2	The Intelligence Function and Culture of the Service	2.A	Genesis and history of the service
		2.B	Intelligence-centered hiring and training
		2.C	Emphasis on HUMINT
		2.D	Intelligence-led incentives
3	The Service's Ability to Acquire and Maintain Public Trust	3.D	Openness policies and public outreach efforts
		3.B	Hiring practices
		3.C	Support to oversight and control mechanisms
		3.D	Actions that violated mandate and impacted public trust
		3.E	Public opinion of the service
4	The Service's Collaboration and Information Sharing with Community Counterparts	4.A	Work with community partners
		4.B	Secondments and regional offices
		4.C	Support to coordinating bodies
		4.D	The service's missteps

With the preceding context and criteria in hand, the rest of this study will address the two remaining questions:

- 1) In what manner do these characteristics exist, if at all, in services often touted as potential models for the United States?
- 2) What lessons from those cases are relevant to, and may further, discourse regarding creation of a new service in the United States?

The study hypothesizes that a qualitative evaluation of these cases, based on the ideal characteristic identified, offers valuable lessons for continued debate. Again using official and secondary-source literature, the remainder of this study addresses these questions by examining the presence of the ideal characteristics in select foreign services, and subsequently seeks to extrapolate lessons.

The two case studies chosen for evaluation are the long-established domestic intelligence services of the United Kingdom—the British Security Service (BSS; commonly known as Military Intelligence Section-5, or MI5)—and of Australia—the Australian Security Intelligence Organization (ASIO). These services offer the best opportunity to evaluate the above characteristics and draw lessons based in the context of the post-9/11 “wish list.” MI5 and ASIO are valuable to this study for four key reasons: (1) their frequent mention as models for an American service; (2) applicability of their social and political contexts; (3) similar struggles against terrorism; and (4) the opportunity to offer contrast to the FBI given their lack of policing powers.

First, along with the Canadian Security Intelligence Service (CSIS), MI5 and ASIO were most frequently offered as models for a new domestic service in America in the post 9–11 discourse. Alongside these services, the leading authors on the topic also examined Germany’s *Bundesamt Fur Verfassungsschutz* (BFV; Federal Office for the Protection of the Constitution) and France’s *Direction de la Surveillance du Territoire* (DST; Territorial Surveillance Directorate).<sup>71</sup> Much less common were evaluations of the Swedish Security Service (SSS; *Sakershetspolisen*)<sup>72</sup> and India’s Intelligence Bureau (IB).<sup>73</sup> Important for this study, security and intelligence scholars James Burch, Brian Jackson, Chalk, Rosenau, and Treverton all focused on MI5 and ASIO. Similarly, when pundits such as Posner and Kayyem explored the matter, the Australian, British, and

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<sup>71</sup> Jackson ed., *Considering*; Treverton, *Reorganizing U.S. Domestic Intelligence*.

<sup>72</sup> Treverton, *Reorganizing U.S. Domestic Intelligence*. Of the authors reviewed, only Treverton considered the SSS.

<sup>73</sup> Burch, “A Domestic Intelligence Agency for the United States?” Of the authors reviewed, only Burch considered the IB.

Canadian systems framed the discussion.<sup>74</sup> The U.S. government also considered MI5 as a potential model. For instance, the Gilmore Commission noted MI5 as the alternative model contemplated by the Executive Branch during post-9/11 deliberations,<sup>75</sup> and a Congressional Research Service study focused specifically on the applicability of MI5 to the U.S. security apparatus.<sup>76</sup> Even when the government rejected consideration of new models, an assessment of MI5—dubbed a “weak analogy” by the 9/11 Commission—was at the forefront.<sup>77</sup>

Second, there are large similarities in the electoral and legal systems, as well as culture, in Australia, Britain, and the United States. While no foreign context will constitute a perfect replica, restricting the study to services operating in contexts similar to the American milieu helps mitigate the impact that significantly different political and social factors may have on the services themselves.<sup>78</sup> In contrast, the context in which the German BFV, Indian IB, and French DST operate makes them less useful for the limited scope of this study. At its inception, the BFV’s powers were sharply limited by a society fearful of a return to Nazism. As such, the BFV’s function is unique and an assessment of

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<sup>74</sup> These authors independently evaluated a myriad of different services—but all looked at MI5 and ASIO. Posner claimed that the CSIS was a better potential model for America. Burch, “A Domestic Intelligence Agency for the United States?”; Chalk and Rosenau, *Confronting the Enemy Within*; Council on Foreign Relations, “Does the United States Need a Domestic Intelligence Service?”; Jackson, ed., *Considering*; Posner, *Remaking Domestic Intelligence*; Treverton, *Reorganizing U.S. Domestic Intelligence*; See also Dahl, “Domestic Intelligence Today: More Security but Less Liberty?”

<sup>75</sup> *The Gilmore Commission Report*, 46.

<sup>76</sup> Masse, *Report for Congress: Domestic Intelligence in the United Kingdom*.

<sup>77</sup> *9/11 Commission Report*, 423. Similarly, in recommending FBI reforms and advocating nesting of an intelligence service within the FBI, the intelligence and law enforcement professionals that authored “America Needs More Spies” noted, “[t]he oft-discussed model of MI5 in Britain does not offer an appropriate American solution to our critical domestic intelligence-collection problem—not for now, at least” (Bryant, et. al., “America Needs More Spies.”, 6). In 2005 the FBI created a nested intelligence element, the National Security Bureau (NSB) in response to presidential directive (Federal Bureau of Investigation, “National Security Branch,” (accessed February 9, 2013) <http://www.fbi.gov/about-us/nsb>). Many authors and pundits, however, disagreed with the 9/11 Commission’s dismissive stance toward the MI5 model, citing MI5’s domestic primacy (in addition to the “worldwide” arena of Northern Ireland) and its lack of policing powers as justification for consideration of MI5 and similar services (e.g., ASIO and CSIS) as a model. For debate on this matter, see Council on Foreign Relations, “Does the United States Need a Domestic Intelligence Service?”

<sup>78</sup> For example, an authoritarian government’s lack of attention to civil liberties in states where political corruption drives intelligence operations. See Roberta D’A Henderson, *Brassey’s International Intelligence Yearbook 2003 Edition* (United States: Brassey’s Inc. 2003), 9–16, 109–116, 207–217, for brief discussion of the Australian, Canadian, and British services.

the service would require excessive focus on system-wide matters such as BFV's significant administrative role in facilitating coordination between multiple domestic agencies.<sup>79</sup> For different reasons, politics and social norms make the IB unsuitable. In addition to rarely being mentioned as a model to replace the FBI, India's IB works in a society sharply divided by ethnicity and economics, with a political culture mired in corruption.<sup>80</sup> In France, it is the security system that sharply limits DST's benefit to a study focused on service-specific matters. France has a long history of militarized domestic security, changing the service-system dynamic in a manner incommensurate with the American system. Furthermore, subsequent to the RAND author's assessments of DST, in 2008 the service was joined with the *Direction Centrale des Renseignements Généraux* (DCRG; Central Directorate of General Intelligence), to form the new *Direction Centrale du Renseignement Intérieur* (DCRI; Central Directorate of General Intelligence).<sup>81</sup> Prior to the merger DST and DCRG shared a complex relationship. In addition to the merger, this relationship makes siphoning service-specific matters from system context exceedingly difficult.<sup>82</sup>

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<sup>79</sup> Richard Warnes, "Chapter Five: Germany," in *Considering*, ed. Brian Jackson, 93–114.

<sup>80</sup> For additional context see Burch, "A Domestic Intelligence Agency for the United States?" 6.

<sup>81</sup> Reuters, "Corrected-Mali Crisis Paving Way for Militant Attacks on France-Judge," January 7, 2013, (accessed January 29, 2013) <http://www.reuters.com/article/2013/01/07/mali-crisis-france-idUSL5E9C616X20130107>; Richard Warnes, "Chapter Four: France," in *Considering*, ed. Brian Jackson, 65–92. DCRG is often referred to by its police title, the *Renseignements Généraux* (RG). RG was the French Police's intelligence arm.

<sup>82</sup> Warnes, "Chapter Four: France," 65. For an insightful examination of French intelligence, see Douglas Porch, *The French Secret Services: From the Dreyfus Affair to the Gulf War* (New York: Oxford University Press, 1997).

It is important to recognize that differences between nations mean that a foreign model cannot be simply transplanted into the American framework.<sup>83</sup> However, a service that operates in a similar structural, political, legal, and social context provides a much clearer opportunity for assessment of applicability to the U.S. context. In this regard, along with the Canadian and Swedish, the Australian and British models seem most applicable to the United States. Undoubtedly there are disparities, but these nations share a long tradition of open society, liberal democratic practices and institutions, as well as concern for threats to national security, civil liberties, and state legitimacy.<sup>84</sup>

Third, Australia and Britain are driven by the same counterterrorism impetus as the United States; both have suffered significant attacks on, and persistent threats to, their citizens and infrastructure. In contrast, Canada, although a key partner in the U.S. “War on Terrorism,” is less a target than a facilitator of U.S. endeavors. Although the risk to Canada as a result of its relationship with, and proximity to, America is not lost on the Canadians, it has yet to manifest in serious or sustained attack. Similarly, in addition to its small size, the limited threat of terrorism also reduces Sweden’s applicability as a model from which to assess characteristics and draw lessons. This lack of significant threat changes the political calculations in both countries. France—cited by author Richard Warnes as having the “most experience in using intelligence to counter both insurgency and terrorism”—Germany, and India have suffered immediate and sustained terrorism threats, but for the reasons noted above the DST, BFV, and IB remain incongruous for this study. In short, unlike Canada and Sweden, and more akin to

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<sup>83</sup> Concepts from Chalk and Rosenau, *Confronting the Enemy Within*, 55–56. Chalk and Rosenau aptly summarized the value of using these models in their justification for doing the same in their study: “[t]o be sure, significant differences exist between the United States on the one hand and the United Kingdom, France, Canada, and Australia on the other...These dichotomies necessarily mean that intelligence institutions cannot, and indeed should not, simply be replicated from one national context to the next—irrespective of their relative efficacy in their original setting. This being said, the United Kingdom, France, Canada, and Australia do share important defining characteristics with the United States, including, notably, (1) liberal democratic traditions and institutions, (2) a common concern with stemming threats to domestic stability through the institution of robust internal security infrastructures, and (3) acceptance of the need to balance operational effectiveness in the fight against terrorism with the concomitant need to respect fundamental norms integral to the effective functioning of an open society...[the] case studies highlight practical operational and organizational lessons that would be extremely valuable, and perhaps even necessary, in the event that a decision is made to create a dedicated domestic intelligence bureau in the United States.”

<sup>84</sup> Concepts from Chalk and Rosenau, *Confronting the Enemy Within*, 9–10.



America, Australia and Britain have experienced repeated, lethal, threats from radical Islamist terrorists that have shaped their security priorities. Given the emphasis in the post-9–11 discourse on counterterrorism as a primary mission, MI5 and ASIO provide the most relevant opportunity for assessment in this regard.

Last, post-9/11 dialogue asked for services that are focused on intelligence rather than policing, and both ASIO and MI5 formally lack law enforcement powers. The differences between law enforcement and intelligence cultures occasionally dominated the post-9/11 discourse, with many authors and officials concluding that an intelligence-led culture was better for counterterrorism. Some argued that the FBI's law enforcement culture inhibited its counterterrorism intelligence work.<sup>85</sup> Summarizing the primary concern, U.S. National Security Advisor during 9/11, Condoleezza Rice, alluded to the necessity of preventative intelligence and its lack of primacy within a reactive law enforcement model: "[t]he FBI treated the international terrorism problem as a law enforcement matter, not an intelligence mission...Prevention was secondary to punishing terrorists after they were caught committing a crime."<sup>86</sup> Correct or incorrect, the discourse viewed intelligence collection and law enforcement as distinct functions, valued an intelligence culture over a law enforcement culture (for counterterrorism), and saw the FBI as embodying the latter. Therefore, in order to respond to the discourse, and avoid replication of previous assessments of the FBI, this study will evaluate services that

lack police powers. Nonetheless, the point may be moot. Of the services covered by the domestic intelligence debate, only the Swedish Security Service held formal, sweeping,

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<sup>85</sup> For example, despite its claims that maintaining the pre-9/11 FBI-led model was necessary to protect liberties, the 9/11 Commission recommend the FBI incorporate a "...culture imbued with a deep expertise in intelligence," albeit one laden with restrictions of legal due process and rule of evidence. *9/11 Commission Report*, 423–424, 72, Chapter 3; Report of the Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, Ch. 10 (Mar. 31, 2005), referenced in Posner *Remaking Domestic Intelligence*; *WMD Commission Report*; White House, "The National Security Strategy of the United States."

<sup>86</sup> Rice, *No Higher Honor*, 68.

police powers. DST had some arrest authority in particular cases that included counterterrorism and counterespionage, but it was formally hedged off from policing powers, and when it did execute police authorities it did so primarily in conjunction with DCRG.<sup>87</sup> For these reasons, and those already outlined above, the Swedish and French services do not provide the most relevant opportunity for assessment. Table 2 offers a graphic representation of the above considerations.<sup>88</sup>

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<sup>87</sup> Warnes, “Chapter Four: France,” 65; Treverton, *Reorganizing U.S. Domestic Intelligence*, 72, 76.

<sup>88</sup> Hulnick aptly noted, “[t]he key characteristic of these agencies is their empowerment to collect and analyze domestic security threats, but without the power of arrest. Instead, when they determine that a threat exists and can pinpoint the sources, they turn to the police to arrest the culprits. None of these countries has the restrictions contained in the U.S. Constitution that prohibit unreasonable searches and seizures, although they do have laws to prevent abuse.” Hulnick, “Home Time,” 578.

Table 2. Factors Influencing Applicability to the United States

Factors Influencing Applicability	ASIO	MI5	BFV	CSIS	DST	IB	SSS
Considered by several authors	++	+++	+	++	+		
Similar political and social context	+	+		+			+
Faces similar threat of terrorism	+	+			+	+	
Offers an “intelligence-only” contrast	+	+	+	+	+	+	

Key: “Considered by several authors” indicates the number of the seven primary studies and commissions reviewed that considered the service as a potential model for the United States. All: “+++”; Three to four studies: “++”; Two studies: “+”; and one or no studies: (empty cell). The remainder of the table indicates a positive (“+”) or negative (empty cell) value.<sup>1</sup>

Sources: The Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction, *Fourth Annual Report to the President and the Congress of the Advisory Panel to Assess Domestic Response Capabilities for Terrorism Involving Weapons of Mass Destruction* (Washington, DC: RAND Corporation, 2002) (accessed September 13, 2012) <http://www.rand.org/content/dam/rand/www/external/nsrd/terrpanel/terror4.pdf>; James Burch, “A Domestic Intelligence Agency for the United States? A Comparative Analysis of Domestic Intelligence Agencies and their Implications for Homeland Security,” *Homeland Security Affairs* Vol. III, No. 2 (June 2007) (accessed august 29, 2012) <http://www.hsaj.org/?fullarticle=3.2.2>; Peter Chalk and William Rosenau, *Confronting the Enemy Within: Security Intelligence, the Police, and Counterterrorism in Four Democracies*, RAND Corporation (Santa Monica, California: RAND Corporation, 2004) (accessed July 18, 2012) <http://www.rand.org/pubs/monographs/MG100>; Brian Jackson ed., *Considering the Creation of a Domestic Security Organization in the United States: Lessons from the Experiences of Australia, Canada, France, Germany, and the United Kingdom* (Santa Monica, California: RAND Corporation, 2009); National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (New York: W.W. Norton and Company, 2004); U.S. Library of Congress, Congressional Research Service, *Report for Congress: Domestic Intelligence in the United Kingdom - Applicability of the MI-5 Model to the United States*, by Todd Masse, CRS Report RL31920 (Washington, DC: Office of Congressional Information and Publishing, May 13, 2003) (accessed October 5, 2012) <http://www.fas.org/irp/crs/RL31920.pdf>; Gregory F. Treverton, *Reorganizing U.S. Domestic Intelligence: Assessing the Options* (Santa Monica, California: RAND Corporation, 2008).

Evaluation of MI5 and ASIO therefore provides an opportunity to assess the post-9/11 “wish list” against models that officials and pundits have asserted as exemplars of domestic intelligence and that allow better isolation of service-specific characteristics from the broader political, societal, and system context. The two services also best meet the needs of this study given the primacy of their nation’s fight against terrorism, and their contrast with the FBI in their lack of law enforcement powers. As such, if the two services fully possess all of the characteristics the American discourse deems ideal, then

lessons from this study may reasonably support arguments that a new, independent, intelligence-only service may help address concerns regarding the present model. Conversely, if the characteristics are not present, or are found to have serious deficits within these two services, this may indicate that the desired characteristics and expectations for a service are misplaced, or that the FBI may have it right, which would warrant a reassessment of the post-9/11 conversation on intelligence and security.

Before continuing it is important to highlight that service-specific assessment offers only a partial answer, and this study does not portend to offer final recommendation regarding creation of a new American intelligence service. As noted in the introduction, the legal, social, and political system in which the service operates has as much, if not more, impact on the service's (and nation's) ability to meet the security intelligence expectations of the government and its citizenry. Furthermore, in its use of publicly available information, the above study may present an incomplete, and hence unduly negative, vision of MI5 and ASIO. In his assessment of New Zealand's intelligence services, Willem de Lint aptly summarized the academic injustice of evaluating intelligence services on unclassified information alone:

The story of any security service is bound to be partial and incomplete. On one hand, we have an official record of released documents providing a bureaucratic record of figures and data and of statutory requirements. On the other hand is a tale jig-sawed together piecemeal from the scooping of unauthorized leaks and hectoring on failed oversight, scandal, and glaring omissions of office...the story of security and intelligence...is a mosaic of both accounts.<sup>89</sup>

Where able, this study will endeavor to account for the above by offering a balanced assessment that gives equal weight, when due, to official documents as media accounts.

## **2. Structure of the Study**

This study consists of four chapters. This introductory chapter canvassed the need for further study of a domestic intelligence service in the United States. It discussed key

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<sup>89</sup> Willem de Lint, "New Zealand," in *PSI Handbook of Global Security and Intelligence: National Approaches: Volume One (The Americas and Asia)*, eds. Stuart Farson et. al. (Westport, Connecticut: Praeger Security International, 2008), 183.

considerations framing the discourse, before identifying ideal characteristics endogenous to a service, as specified or implied by the post-9/11 literature. The chapter concluded by outlining the methodology for approaching relevant case studies—MI5 and ASIO. Chapters II and III of this study will evaluate the British and Australian services, respectively. These chapters will focus on identifying the presence or absence of the ideal characteristics from Chapter I, and assessing their impact on the services. The final, fourth, chapter will conclude the study by extrapolating lessons from the case studies that may prove relevant to continued discourse regarding the creation of an independent American domestic intelligence service.

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## II. THE BRITISH SECURITY SERVICE

When the American debate turns to domestic counterterrorism intelligence alternatives, the British Security Service—more commonly known as MI5—is often offered as a potential model to replace the FBI-led apparatus.<sup>90</sup> As Hulnick noted, “[t]he preferred model for those who think the present system is not working is Great Britain’s internal security service, MI-5.”<sup>91</sup> The proposal seems natural. The nations share historical ties, similar cultures, and a democratic imperative to uphold civil liberties. Both have struggled, often in concert, against Cold War threats and terrorism. Britain has considerable experience from its centuries-long fight against Irish Republican terrorism and, more recently, Islamic extremism. For these reasons MI5 provides a useful model to test the characteristics desired in an American service.<sup>92</sup>

Using official documents, authorized accounts, and unofficial pieces both supportive and critical of the Security Service, this chapter will assess the presence of the post-9/11 discourse’s ideal characteristics in MI5—a well-established domestic intelligence service, created over a century ago. To do so, after an overview of the service, this chapter will explore MI5’s emphasis on counterterrorism, intelligence-led culture, effort to secure the public trust, and collaboration with community counterparts, before offering a summary conclusion.<sup>93</sup>

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<sup>90</sup> For examination of MI5 as a model for the United States, see: *The 9/11 Commission Report*; Burch, “A Domestic Intelligence Agency for the United States?”; Lindsay Clutterbuck, “The United Kingdom,” in *Considering*, ed. Brian Jackson, 495–507; Posner, *Remaking Domestic Intelligence*; Trevorton, *Reorganizing U.S. Domestic Intelligence*, and the *WMD Commission Report*, among others.

<sup>91</sup> Hulnick, “Home Time.”

<sup>92</sup> “Security Service,” “the Service,” and “MI5” are used interchangeably in this study. “MI5” stands for Military Intelligence Section 5. Please also note that where appropriate, such as in the case of direct quotes or official titles, this study will use Britain’s Queen’s English spelling.

<sup>93</sup> The authorized history of MI5 is Christopher Andrew’s *Defend the Realm: the Authorized History of MI5* (New York: Alfred A. Knopf, 2009). Unauthorized works include those published by former MI5 officers such as David Shayler. Shayler has written separately on his own, but the best assessment of his comments, were recorded in Nick Fielding and Mark Hollingsworth’s *Defending the Realm: Inside MI5 and the War on Terrorism* (London, England: Andre Deutsch, 2003).

## A. OVERVIEW OF THE SERVICE

The United Kingdom's national intelligence apparatus consists of an external collection service (the Secret Intelligence Service; SIS, or MI6), a signals intelligence service (the Government Communications Headquarters; GCHQ), and MI5, the domestic service.<sup>94</sup> In addition to MI6 and GCHQ, MI5 works closely with the central, London-based, Metropolitan Police and regional police forces. Each of the services provides intelligence and analysis to cabinet ministers via the Joint Intelligence Center (JIC). Separately, through the MI5-led national Joint Terrorism Analysis Center (JTAC), the services provide counterterrorism-specific assessments to government ministries and private companies.<sup>95</sup>

MI5 traces its roots to 1909 and the establishment of the Security Service Bureau. Designed to uncover German spies and saboteurs, during World War I the Bureau split into two independent arms—MI5 and MI6.<sup>96</sup> Now fully a civilian agency, MI5's mission is to predict and help counter threats that manifest inside the United Kingdom. MI5's primary focus has evolved over the years to meet the most prevalent threat of the moment, but its overarching role of detecting and countering covert threats—"defending the realm"—has remained unchanged since 1909.<sup>97</sup>

MI5 operates under the cabinet-level authority of the British Home Office. The Home Secretary selects the Service's Director General (DG).<sup>98</sup> The DG and two deputies oversee the JTAC and seven operational and support branches. Figure 1 depicts MI5's chain of command and Figure 2 illustrates MI5's branch structure.

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<sup>94</sup> D'a Henderson, *Brassey's International Intelligence Yearbook*, 207–209.

<sup>95</sup> Chalk and Rosenau, *Confronting the Enemy Within*, 10. MI5 provides intelligence and the police act upon MI5 information by opening and investigation and conducting arrests where warranted.

<sup>96</sup> MI5 and MI6 have their respective fields of primary responsibility, but they operate across geographic areas in support of one another. In 1992 MI5 took over responsibility for Irish Republican counterterrorism inside mainland Britain. In 2006–2007 it assumed responsibility for counterterrorism in Northern Ireland from the Police Service of Northern Ireland (PSNI).

<sup>97</sup> Masse, *Report for Congress: Domestic Intelligence in the United Kingdom*, 4–5.

<sup>98</sup> Burch, "A Domestic Intelligence Agency for the United States?" 6. The Home Office is responsible for U.K. immigration, security, as well as law and order.

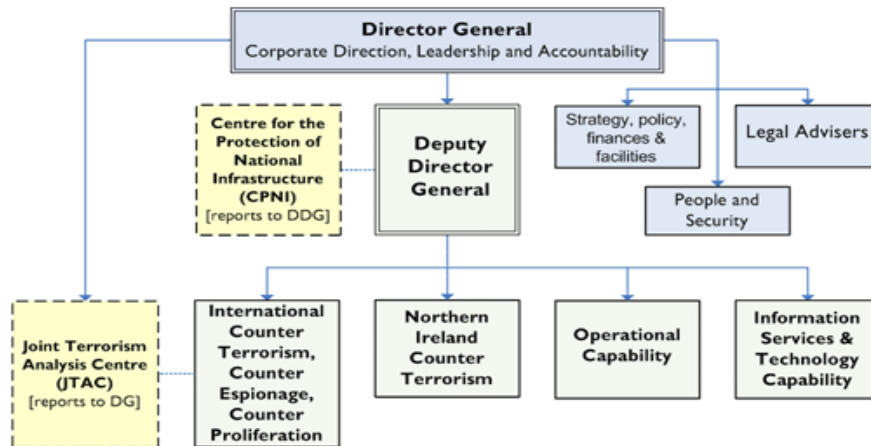


Figure 1. British Security Service (MI5) Command Structure

From: MI5—The Security Service, “Who We Are,” (accessed October 17, 2012)  
<https://www.mi5.gov.uk/home/about-us/who-we-are/organisation.html>.

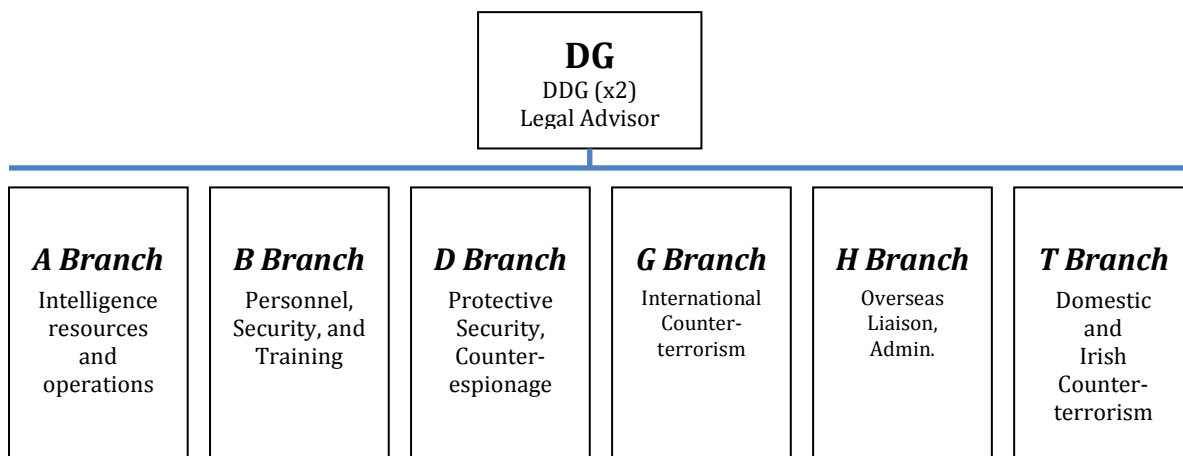


Figure 2. British Security Service (MI5) Branches<sup>99</sup>

After: Christopher Andrew, *Defend the Realm: the Authorized History of MI5* (New York: Alfred A. Knopf, 2009), Appendix 3.

The Service’s official mandate rests in the Security Services Act of 1989 (SSA 1989), which provided statutory authority for MI5 and officially recognized its existence for the first time. SSA 1989 formally outlined MI5’s responsibilities:

<sup>99</sup> D Branch includes the former branches known as F (Counter-subversion, folded into C Branch in 1988), C (Protective Security and Counter-subversion, folded into D Branch in 1994), and K (Counterespionage, folded into D Branch in 1994). International terrorism is the responsibility of G Branch; it is responsible for counterproliferation, threat assessments, and terrorism from the Indian subcontinent, Libya, Palestine, Iran, and Islamic Extremists. T Branch is responsible for terrorism related to Northern Ireland. Andrew, *Defend the Realm: the Authorized History of MI5*.



The protection of national security and, in particular, its protection against threats from espionage, terrorism and sabotage, from the activities of agents of foreign powers and from actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. It shall also be the function of the Service to safeguard the economic well-being of the [United Kingdom] against threats posed by the actions or intentions of persons outside the [United Kingdom].<sup>100</sup>

In 1996 the government amended the SSA, extending MI5's mandate to include support for police anti-organized crime efforts.<sup>101</sup> Similarly, the Intelligence Services Act of 1994 (ISA 1994) and the Regulation of Investigatory Powers Act of 2000 (RIPA 2000) provided additional statutory guidance and established oversight parameters for MI5.<sup>102</sup> As of 2012, MI5 listed its priorities as preventing terrorism, foreign espionage, and weapons proliferation in addition to protecting sensitive information and reducing serious crime "through assistance to law enforcement agencies."<sup>103</sup> MI5 does not have full policing powers; it cannot initiate nor close investigations, and its officers generally lack arrest authority. Policing responsibilities rest with the United Kingdom's 56 police forces including regional offices, the Metropolitan Police Service (often referred to as Scotland Yard)—which has Special Branches (MPSB) that collect information for the prosecution of crimes, including terrorism—and the Police Service of Northern Ireland (PSNI), formerly the Royal Ulster Constabulary (RUC).<sup>104</sup>

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<sup>100</sup> Quoted in Clutterbuck, "The United Kingdom," 122.

<sup>101</sup> Center for Democracy and Technology, "Domestic Intelligence Agencies: the Mixed Record of the U.K.'s MI5," January 27, 2003 (accessed October 9, 2012) <https://www.cdt.org/security/usapatriot/030127mi5.pdf>, 6.

<sup>102</sup> Masse, *Report for Congress: Domestic Intelligence in the United Kingdom*, 4. ISA 1994 established a parliamentary committee to oversee budget and legal issue. RIPA 2000 established tribunals to review warrants for entry operations, electronic eavesdropping, and mail intercepts as well as to investigate complaints against Britain's intelligence services.

<sup>103</sup> MI5—The Security Service, "What We Do," (accessed October 18, 2012) <https://www.mi5.gov.uk/home/about-us/what-we-do/objectives-and-values.html>.

<sup>104</sup> Burch, "A Domestic Intelligence Agency for the United States?" 6; Center for Democracy and Technology, "Domestic Intelligence Agencies," 6–7; Chalk and Rosenau, *Confronting the Enemy Within*, 12; D'a Henderson, *Brassey's International Intelligence Yearbook*, 6.

## **B. COUNTERTERRORISM AS THE SERVICE'S MISSION**

As outlined previously, the post-9/11 discourse indicated a desire for intelligence services to emphasize counterterrorism as their top priority. This prioritization may require a service to revamp its mission, institutional incentives, resource allocations, and hiring practices. Effective counterterrorism also requires a service to recognize and address threats with domestic and international origins. Despite its counterespionage and counter-subversion beginnings, by 2012 MI5's mission was squarely oriented on counterterrorism and it maintained a focus on transnational and domestic terrorism. In one critical area—hiring for counterterrorism—MI5 found it harder to achieve full success.

### **1. MI5's Origin, History, and Mission**

From 1909 through the end of the Cold War the Service focused the preponderance of its energy toward counterespionage and counter-subversion.<sup>105</sup> German spies and political revolutionaries garnered MI5's attention through WWII. The rise of Soviet bloc espionage and Communist expansion after WWII kept subversion and espionage at the forefront until the decline of the Cold War. MI5, however, was no stranger to counterterrorism. Following WWI, the Service was involved in efforts to counter what would become the Irish Republican Army (IRA) terrorist group; during the 1960s-1980s MI5 worked with security partners against Northern Ireland-related terrorism and transnational groups. Prior to 1990, however, London treated terrorism as a criminal matter to be dealt with by the police.<sup>106</sup>

Undoubtedly, there was a national security impetus for MI5's transition to counterterrorism; in the 1980s and 1990s Libyan, Iranian, and Palestinian terrorists were of concern, and by 1991 IRA-related violence on the British mainland had reached its

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<sup>105</sup> Fielding and Hollingsworth, *Defending the Realm*, 26. In 1931 MI5 assumed authority for assessing broader national security threats (other than anarchists and Irish terrorists, which were the responsibility of the RUC and Scotland Yard).

<sup>106</sup> Ibid., 5; Andrew, *Defend the Realm: the Authorized History of MI5*, 771. In 2007 MI5 would assume lead responsibility for terrorism in Northern Ireland.

highest level since 1975.<sup>107</sup> Inside MI5, however, the aggressive shift toward counterterrorism was triggered more by the specter of budget cuts than by security need. The decline of the Soviet threat meant a drastic reduction in MI5's traditional operations. Concurrently, the Service suffered from reports that it had violated civil liberties while executing its anti-Communist mission. By the late 1980s, MI5 appeared to be a sinking ship.<sup>108</sup>

MI5's Director General at the time, Antony Duff, viewed counterterrorism as the key to refloating the Service. In 1986, Duff used MI5's role in thwarting the attempted bombing of an El Al Flight from Heathrow Airport as evidence of the Service's effectiveness. In 1991, Stella Rimington took the helm of MI5 and continued to prioritize counterterrorism. In February 1991, an IRA mortar attack on 10 Downing Street offered the catalyst for MI5 to wrestle the IRA-related counterterrorism mission from MPSB; in 1992 MI5 formally assumed the lead for counterterrorism intelligence collection on the British mainland.<sup>109</sup>

With the September 2001 attacks in the United States, MI5 aggressively turned its focus to transnational terrorism and Islamic extremism. Sadly, Britain would suffer similar violence. On July 7, 2005, British Muslim radicals proclaiming alliance with al-Qaeda conducted suicide attacks against the London underground train system and a passenger bus. The attacks, known as "7/7," killed 52 innocent civilians and solidified MI5's attention to counterterrorism—in particular Islamic extremism born on U.K. soil.<sup>110</sup>

MI5's institutional adjustments from counterespionage to counterterrorism were not simply rhetoric. For example, it adjusted its branch structure in support of the new

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<sup>107</sup> Fielding and Hollingsworth, *Defending the Realm*, 136.

<sup>108</sup> Mark Urban, *UK Eyes Alpha: the Inside Story of British Intelligence* (London, England: Faber and Faber Limited, 1996), 44.

<sup>109</sup> Urban, *UK Eyes Alpha*, 43. 10 Downing Street is the official residence and office of the Prime Minister. In 1986 U.K. courts convicted Jordanian citizen Nizar Hindawi of attempting to bomb an El Al Airlines flight out of Heathrow Airport. MI5 had played a role in thwarting the bombing and the operation was considered an intelligence success (albeit largely due to GCHQ efforts).

<sup>110</sup> Clutterbuck, "The United Kingdom," 120. Four suicide bombers killed 52 innocent victims in the 7/7 attack.

mission. As outlined above, as of 2012 MI5 dedicated two operational branches to counterterrorism. More recently, MI5 shifted resources toward emerging cyber threats and has expanded its definition of terrorism to include “serious interference with or disruption to an electronic system.”<sup>111</sup>

The path to its current form, however, indicates that the Service’s focus may be driven by political survival as much as national security need. As evidence, shortly after MI5 assumed responsibility for counterterrorism inside Britain, violence declined and in 1994 the PIRA agreed to a ceasefire. In the terrorism lull, MI5 quickly sought to expand its mission—this time into combating organized crime. In a reversal of her earlier position, DG Rimington sought to involve MI5 in criminal investigations; she claimed that the SSA 1989 unduly limited MI5’s mandate.<sup>112</sup> When terrorism again rose in political importance, however, MI5 receded from its support to countering crime and reenergized its counterterrorism branches.<sup>113</sup>

## **2. MI5’s Counterterrorism-led Incentives**

The prioritization of counterterrorism since the 1980s was evident in MI5’s selection of its leadership and its intelligence reporting streams. Although the Home Secretary appoints the DG, throughout its history the DG was most often groomed by the Service and appointed in accordance with the recommendation of the incumbent. Since 1988 and the departure of Duff (himself a counterterrorism-minded DG), MI5 DG’s have

all come from counterterrorism backgrounds. For MI5 officers the message seemed clear:

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<sup>111</sup> MI5—The Security Service, “Terrorism,” (accessed October 11, 2012) <https://www.mi5.gov.uk/home/the-threats/terrorism.html>; BBC News, “MI5 Boss Jonathan Evans Warns Over Cyber Threat,” *BBC News Online*, June 26, 2012 (accessed October 11, 2012) <http://www.bbc.co.uk/news/uk-18590209>.

<sup>112</sup> Fielding and Hollingsworth, *Defending the Realm*, 309; Clutterbuck, “The United Kingdom,” 115. In the SSA Amendment of 1996 the government extended MI5’s mandate to include direct support to police organized crime investigations. This authority was lessened in 2007 when MI5’s branch of government, the Home Office, lost most of its criminal justice responsibilities to the newly created Ministry of Justice.

<sup>113</sup> Mark M. Lowenthal, *Intelligence: From Secrets to Policy*, 5th Edition (Washington, DC: CQ Press, 2012), 346; Center for Democracy and Technology, “Domestic Intelligence Agencies,” 6; Clutterbuck, “The United Kingdom,” 120–121. MI5 maintained its support to organized crime until 2006 when responsibility moved to the newly formed Ministry of Justice.

counterterrorism branches produced top leadership. This emphasis would naturally draw officers to G and T Branch.<sup>114</sup>

Transition from a service that was built upon a traditional, analytical, approach to intelligence, however, was a slow and incomplete process. According to critics such as former MI5 officer David Shayler, despite the new masthead and promotions at the top, by the mid-1990s, the Service had failed to fully incentivize counterterrorism. MI5 management continued to uphold a culture that valued formal briefings and assessments designed toward counterespionage investigations over counterterrorism operations.<sup>115</sup> If judged by allocation of resources, however, by the 2000s MI5 proved Shayler's criticism premature.<sup>116</sup>

### **3. MI5's Allocation of Resources**

Where MI5's shifting of incentives may have stuttered, its realignment of resources toward counterterrorism was purposeful and aggressive. Despite the continued need to combat espionage, MI5 cannibalized its counterespionage and counter-subversion operations in order to bolster its counterterrorism work. Movement of resources focused on two areas: personnel and funding.<sup>117</sup>

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<sup>114</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 84 and 197. Of MI5 DGs since Duff, Patrick Walker (1988–1992) was the first director of G Branch (international counterterrorism); Stella Rimington (1992–1996) also led G Branch; Stephen Lander (1996–2002) was the former director of T Branch (domestic and Northern Ireland-related terrorism); Eliza Manningham-Buller (2002–2007) was a career counterterrorism officer, the head of T Branch, and the first head of T Branch's unit dedicated to countering mainland IRA-related terrorism (Section T2); and the current head of MI5, Jonathan Evans (2007 to present), previously led the unit responsible for Middle East-related terrorism (Section G9, in G Branch) as well as T Branch.

<sup>115</sup> Fielding and Hollingsworth, *Defending the Realm*, 142.

<sup>116</sup> Of note, MI5 staff also pursued counterterrorism reporting with increased zeal as MI5's focus shifted. In 1986–1987 MI5 produced 750 counterterrorism reports. The following year reporting increased to 1,100. Although the increase could correlate to increased terrorist activity, terrorist incidents did not escalate by a factor comparable to that of the increased reporting. Andrew, *Defend the Realm: the Authorized History of MI5*, 745.

<sup>117</sup> MI5's most notable operations immediately following 9/11 were in the area of counterespionage. In particular, it investigated a British Aerospace guard and a BAE Systems contractor for their attempts to pass sensitive information to the Russians. Per the 2001–2002 MI5 Annual Report to the Home Office, "work against international terrorism post 11 September was achieved at a cost to the Service's counter-espionage work. Coverage was reduced effectively to four potentially hostile states and lower priority casework was suspended." Quoted in Andrew, *Defend the Realm: the Authorized History of MI5*, 813–14.

The personnel shift took root under the leadership of DG Rimington in 1991. Rimington was known as a terrorism specialist and made expansion of MI5's counterterrorism operations her priority, moving resources and people into two branches responsible for terrorism. In the late 1990s, with the emerging threat of Islamic extremism and resurgence of Northern Ireland-related terrorism, MI5 received additional funding and used it to increase the number of counterterrorism officers. These recruitment surges, along with creation of new elements and director-level positions within the counterterrorism branches, indicated a strong emphasis on counterterrorism.<sup>118</sup> Figure 3 shows the sharp rise in terrorism-related allocations, and the associated decline in counterespionage resources.

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<sup>118</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 794; Frank Gregory, "An Assessment of the Contribution of Intelligence-led Counter-terrorism to UK Homeland Security Post-9/11 within the 'Contest' Strategy," in *Homeland Security in the UK: Future Preparedness for Terrorist Attack Since 9/11*, ed. Paul Wilkinson (New York: Routledge, 2007), 189. T Branch was created in 1990 in order to better use resources against the domestic and transnational terrorist threats.

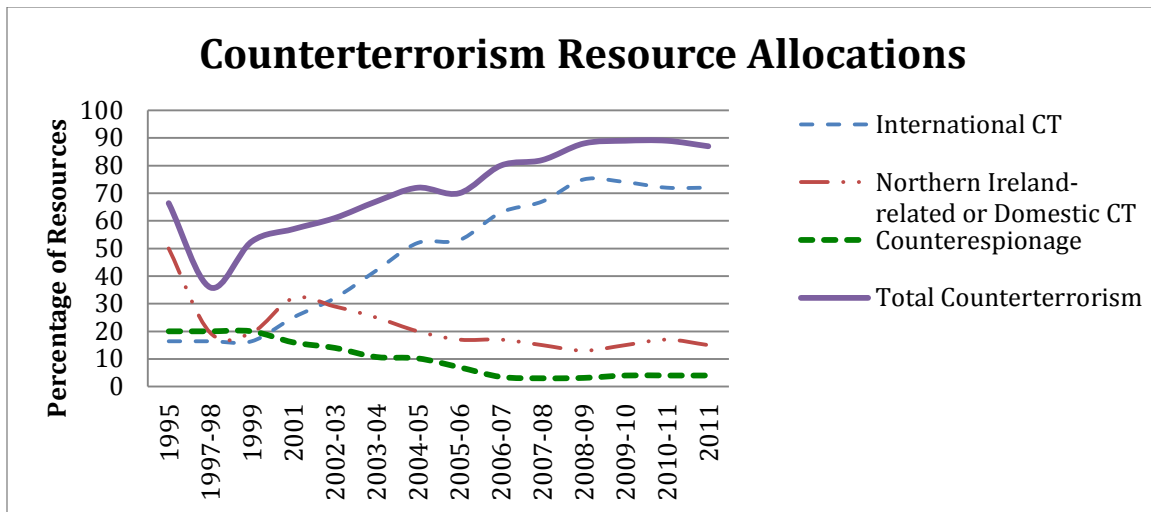


Figure 3. British Security Service Counterterrorism Resource Allocations  
(Percentage of Overall Budget Dedicated)

Source: U.K. Intelligence and Security Committee, “Intelligence and Security Committee Annual Reports,” *Cabinet Office* (accessed October 17, 2012) <http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports>; MI5—The Security Service, “Major Areas of Work,” (accessed September 29, 2012) <https://www.mi5.gov.uk/home/about-us/what-we-do/major-areas-of-work.html>; Hewitt, *The British War on Terror* (London, England: Continuum Books, 2008), 94. See Appendix A for a detailed year-by-year breakdown.<sup>119</sup>

MI5 also began aggressively reallocating funding toward counterterrorism in the early 1990s, moving resources from branches responsible for political subversion (F Branch) and counterespionage (K Branch) to G and T Branches.<sup>120</sup> By the mid-1990s, domestic counterterrorism consumed one-half of MI5’s budget and international

<sup>119</sup> Data for 1995–2010/11 acquired from the U.K. Intelligence and Security Committee (ISC) annual reports. Data for 2011 is valid through March 2011 and was acquired from the MI5 website. For the purpose of graphical representation, unavailable data for a given year (e.g., 1997–1998) was recorded as the same as the previous year for which data was available. The graph does not depict the cost to other areas, such as counterproliferation and protective services, which remained at minimal levels following the Cold War.

<sup>120</sup> Fielding and Hollingsworth, *Defending the Realm*, 5 and 134–136.

counterterrorism consumed near 25 percent.<sup>121</sup> The attacks of 9/11 and 7/7 cemented the resource shift; as of March 2011, 87 percent of MI5's resources were dedicated to counterterrorism.<sup>122</sup>

#### **4. MI5's Counterterrorism-centered Hiring and Training**

In response to the increasing workload as a result of counterterrorism investigations, MI5 planned to double its workforce from 2,000 in 2001 to 4,000 in 2011.<sup>123</sup> More, however, is not always better. Counterterrorism requires a diverse group of officers with the skills and personal background to identify and recruit penetrations of terrorist networks. Recognizing such, the Service sought to change its image as an upper-class boys club. In this vein, Rimington became the first woman to lead an intelligence service in any Western nation, and the first to be publicly named in Britain.<sup>124</sup> In addition, by 1998 MI5 recruiters sought officers from the British Muslim population and in 2000 it advertised positions in newspapers known for their ethnically diverse readership.<sup>125</sup> MI5 acquired additional resources to recruit officers for counterterrorism. According to authors Nick Fielding and Mark Hollingsworth, in 2002 the U.K. Treasury provided MI5 with funds seven percent over its budget and "the main focus [was] hiring

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<sup>121</sup> Urban, *UK Eyes Alpha*, 281; Steve Hewitt, *The British War on Terror* (London, England: Continuum Books, 2008), 90. In 1994, Rimington claimed that MI5 had moved approximately half of its resources to counterterrorism operations. As a result of the resource shift, the counterespionage (K Branch) and counter-subversion (F Branch) units were left with far less than during their Cold War heyday and the reduced branches were eventually merged and relabeled "D Branch."

<sup>122</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 814, 826, 831. By the end of 2008, MI5 dedicated two-thirds of its resources to combating international Islamic terrorism during the same period it spent only 3.5 percent of its budget on counterespionage.

<sup>123</sup> Ibid., 826; Mark Phythian, "In the Shadow of 9/11," in *Intelligence, Security, and Policing Post-9/11: The UK's Response to the 'War on Terror'* eds. Jon Moran and Mark Phythian (United Kingdom: Palgrave MacMillan, 2008) 33, 48. On September 11, 2001 MI5 was monitoring approximately 250 targets in the UK. This number doubled by July 2004 and by July 2005 MI5 was investigating nearly 800 cases. By 2007 the number of cases was near 1600. In contrast, by several accounts, as of 2011 MI5 was about 900 officers short of its 4,000 officer mark.

<sup>124</sup> Fielding and Hollingsworth, *Defending the Realm: the Authorized History of MI5*, 131.

<sup>125</sup> Ibid., 4. MI5's 2000 "A Life Less Ordinary" hiring campaign was run in ethnic newspapers such as *New Nation*.



fast-track graduate trainees with a grounding in languages and understanding of suspect rogue states.”<sup>126</sup> One area of emphasis was Arabic and South Asian Languages.<sup>127</sup>

Intent, however, does not always equal success. According to reporting from the U.K. Intelligence and Security Committee (ISC), MI5 had difficulty attracting officers with linguistic and technical skills.<sup>128</sup> Moreover, in 2008, counterterrorism scholar Steve Hewitt assessed that a lack of penetrations of British-based Islamic networks was the result of “the fact that the agencies doing the infiltrating lacked diversity...Only six percent of [MI5’s] members were drawn from ethnic minorities at the end of 2006...”<sup>129</sup> Furthermore, MI5’s hiring changes may have come too late. While lauding the intent, scholars such as Hewitt questioned why, despite the apparent threat and additional funding, MI5 could not “explain the slowness in initiating other important 2004 reforms that would prove of even greater relevance” on July 7, 2005.<sup>130</sup>

## **5. MI5’s Attention to Transnational Threats**

MI5 divides terrorism between domestic and international origins. For the Service, domestic terrorism includes threats that originate from U.K.-based actors in pursuit of domestic causes other than the status of Northern Ireland (which has its own category). In contrast, MI5 defines international terrorism as “linked to” ideologies, individuals, or groups originating outside of the U.K.<sup>131</sup>

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<sup>126</sup> Ibid., 58.

<sup>127</sup> Lowenthal, *Intelligence*, 346; Tobias Feakin, “Bringing Intelligence into the Light,” *Royal United Services Institute Online*, January 9, 2011 (accessed October 11, 2012) [www.rusi.org](http://www.rusi.org). Feakin noted “[g]one are the days of additions to the service being plucked from Oxbridge; a modern era beckons, in which MI5 has to be representative of the population it serves. Furthermore, it has to be technologically savvy enough to keep up with those it hopes to stop from conducting acts of terror.”

<sup>128</sup> U.K. Intelligence and Security Committee, “Intelligence and Security Committee Annual Reports,” *Cabinet Office* (accessed October 17, 2012) [http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports\\_](http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports_)

<sup>129</sup> Hewitt, *The British War on Terror*, 109.

<sup>130</sup> Ibid., 98; Andrew, *Defend the Realm: the Authorized History of MI5*, 751.

<sup>131</sup> MI5—The Security Service, “Terrorism.” MI5 defines domestic terrorists as “individuals or groups that carry out criminal acts of direct action in pursuit of a campaign. They usually aim to prevent something from happening or to change legislation or domestic policy, but try to do so outside of the normal democratic process. They are motivated by domestic causes other than the dispute over Northern Ireland’s status.”

MI5's attention to transnational terrorism came late. Per security scholar Frank Gregory, this reflected "both an understandable pre-occupation with Irish terrorism and an initial scaling down of counter-espionage operations post 1989..."<sup>132</sup> In the 1990s, MI5 struggled to get a handle on transnational Islamic terrorism; in 1995 G Branch had only one desk officer dedicated to Islamic extremism and it was not until 1998 that MI5's annual report acknowledged the potential for Britain-based Islamic radicalism. When al-Qaeda attacked U.S. Embassies in Africa in 1998, by its own admission, MI5 had little information on al-Qaeda, its leader Osama Bin Laden, and transnational Islamic-extremist networks.<sup>133</sup>

MI5's expansion into transnational arenas was driven more by need than foresight and may have come too late. For example, despite world terrorism events, by 7/7 MI5 had not yet addressed the potential threat from British extremists tied to Pakistan. Although it took attacks inside Britain to draw MI5's full attention outward, by 2012 the Service appeared to have made a substantial shift. To this end, MI5's noted concern over the 2011–2012 "Arab Spring" uprisings for the permissive environment they presented for extremists, demonstrated the service's focus on transnational terrorism.<sup>134</sup>

### **C. THE INTELLIGENCE FUNCTION AND CULTURE OF THE SERVICE**

As outlined in the previous chapter, the post-9/11 discourse held that, in order to facilitate a mission of counterterrorism, a domestic intelligence service must foster a culture that promotes predictive intelligence over reactive, law enforcement-centric operations. To this end, the service must employ its resources, hiring methodology, and training practices in a manner that supports long-range operations. Furthermore, these operations should prioritize HUMINT as the primary mode of acquiring intelligence on terrorist activity. A review of MI5 in light of these expectations indicates that the Service has an intelligence-led culture that promotes predictive intelligence. That said, MI5's

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<sup>132</sup> Gregory, "An Assessment," 187.

<sup>133</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 805; Hewitt, *The British War on Terror*, 60.

<sup>134</sup> BBC News, "MI5 Boss Jonathan Evans Warns Over Cyber Threat." Two of the 7/7 bombers, Mohammad Sidique Khan and Shezad Tanweer, travelled to Pakistan repeatedly, as did attack plotter Omar Khayam, Rashid Rauf, and Muktar Said Ibrahim (a member of a failed July 21, 2005 plot).

recent emphasis on counterterrorism has caused its methods and incentives to move toward those of a law enforcement organization.

## **1. MI5's Genesis and History**

MI5 began as an intelligence service. Created specifically to combat foreign espionage, MI5 organized itself around provision of intelligence analysis and predictive information, from which other government agencies could take action.<sup>135</sup> DG Rington summarized MI5's function as "assessing likely new threats but before an investigation can be mounted..."<sup>136</sup> MI5 has maintained this emphasis on predictive intelligence through 2012 as it continued to collect intelligence in support of Britain's "prevent, pursue, protect, and prepare" approach to counterterrorism (known as CONTEST).<sup>137</sup>

## **2. MI5's Intelligence-centered Hiring and Training**

Although not always successful, MI5's hiring efforts mirrored its intelligence-centric mission and intention to provide predictive intelligence; the Service sought officers with personalities and skills commensurate with the mission of acquiring predictive intelligence.<sup>138</sup> In 1976 MI5 moved away from the nepotistic hiring practices of its early years and began administering tests to assess applicant potential.<sup>139</sup> Years later, in the 1990s, MI5 job advertisements emphasized a wider variety of intelligence-led traits: MI5 was "keen to recruit people from ethnic minorities" and sought applicants with "analytical abilities" and "flexibility" from "a wide range of backgrounds."<sup>140</sup> Language skills also increasingly came to the forefront, in particular a desire for South Asian and Arabic language speakers.<sup>141</sup> Despite ISC annual reporting indicating that

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<sup>135</sup> Clutterbuck, "The United Kingdom," 118–119.

<sup>136</sup> Gregory, "An Assessment," 187.

<sup>137</sup> Burch, "A Domestic Intelligence Agency for the United States?" 6.

<sup>138</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 548–9.

<sup>139</sup> Ibid., 549. Tests included writing and critical thinking problems in addition to personality and aptitude tests such as the "Wonderlic" exam. Wonderlic claimed to measure speaking skills, analytical skills, and mathematical logic. An interview and selection board followed written exams.

<sup>140</sup> Ibid., 792.

<sup>141</sup> Gregory, "An Assessment," 191.

MI5's goal of hiring more ethnically diverse officers with language skills remained elusive, there was indication that MI5's diversity programs had some positive impact.<sup>142</sup> According to former DG Eliza Manningham-Buller, "[i]n [the 1960s and 1970s] the intelligence cadre was almost entirely male, with many ex-military or Colonial Service officers in their middle years. Now...[h]alf of the directors are under 50 and over 40% of the intelligence officers are women."<sup>143</sup>

MI5 training appeared to be less systematic than its hiring practices. Through the 1950s MI5 relied upon on-the-job training over formal intelligence courses. As the Cold War bloomed, MI5 adjusted its training to deal with Soviet bloc spies. In 1975 MI5 began a formal agent-running course and in 1977 added a basic management course. By most accounts, MI5 continued to maintain a formal training program that included intelligence collection, information analysis, and agent operations.<sup>144</sup>

Despite its history and maneuvers to remain an intelligence-led culture, MI5's move into counterterrorism had a potentially negative impact. Counterterrorism has a public side that becomes easily politicized and often plays out in the courts. As lead counterterrorism agency for actions in Britain after 1992, MI5 officers began to replace MPSB officers under the political and judicial microscopes. As DG Rimington stated, by the early 1990s MI5 felt the impact of its new role:

The new breed of MI5 officer was comfortable in Whitehall, sitting on committees and discussing issues with ministers and their advisors. As more and more counterterrorist operations were successful and ended with the arrest and trial of suspects, giving evidence in court became more common. Those who were able to meet these new requirements thrived and advanced, those who couldn't either left or became back room players.<sup>145</sup>

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<sup>142</sup> U.K. Intelligence and Security Committee, "Intelligence and Security Committee Annual Reports."

<sup>143</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 776.

<sup>144</sup> Ibid., 334–5 and 549. In the 1950s, MI5 offered on-the-job training within a Section F—the unit responsible for identifying Communists—to learn MI5's filing system, source evaluation, and working with police forces. Later, formal training began with a four-week course that consisted of lectures on espionage threats, counterespionage, surveillance, and opening of mail.

<sup>145</sup> Quoted in Ibid., 561.

An MI5 officer in the modern age of counterterrorism was asked to serve as a conduit between the service and the system. Increasingly removed from the shadows, MI5 risked becoming less a master of clandestine operations and more a hybrid politician-lawyer-spy.

### **3. MI5's Emphasis on HUMINT**

As outlined in earlier chapters, counterterrorism intelligence requires prioritization of HUMINT. MI5, however, was not known for its HUMINT operations. MI5 was a service that relied on analytical skills to uncover Soviet spies. Even in an era of counterterrorism, the Service relied heavily on phone taps and prioritized analytical assessments over long-term agent operations designed to interdict terrorist networks.<sup>146</sup> Former MI5 officer and notorious whistleblower Shayler commented that “[t]he great difference between MI5 and most of the intelligence services is that the people are not routinely taught how to run agents...[it is] very bad at recruiting agents.”<sup>147</sup> Contrary to these criticisms, MI5 leadership placed a premium on human agents in support of counterterrorism. DG Rington was known to tout the value of recruiting and assigned specialist officers to run long-term agents.<sup>148</sup> Unfortunately, the value of this practice was thwarted by a concurrent policy of rotating postings, replacing old officers with new on a regular basis.<sup>149</sup> Despite these efforts, comments by senior national security officers indicated that as of 2007, MI5 continued to have a difficult time acquiring agents within Muslim extremist networks.<sup>150</sup>

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<sup>146</sup> Fielding and Hollingsworth, *Defending the Realm*, 91.

<sup>147</sup> Ibid., 69. The authors added: “...MI6 and HM Customs view recruiting and running agents as a top priority, MI5 see it as just one of several different techniques.”

<sup>148</sup> Ibid., 69.

<sup>149</sup> Ibid., 70.

<sup>150</sup> Jon Moran, “Politics, Security, Intelligence and Liberty,” in *Intelligence, Security, and Policing Post-9/11*, eds. Jon Moran and Mark Phythian, 25. In 2008 critics, including criminal justice scholar Jon Moran, held that MI5 needed to focus more of its effort on acquiring sources within radical networks.

#### 4. MI5's Intelligence-led Incentives

MI5's increasingly public role in U.K. counterterrorism efforts after 1991—in particular its support to criminal prosecutions—caused an incremental drift toward law enforcement-based incentives within the service (such as valuing prosecutions over long-term operations); MI5 sought predictive intelligence, but progressively adopted law enforcement-like incentives and practices such as pursuit of near-term leads in support of investigations geared toward arrest and trial.<sup>151</sup> To its credit, MI5 fought to maintain an emphasis on long-term, predictive, operations. In her pitch for MI5 primacy over IRA-related terrorism on the mainland, Rimington focused on the value of intelligence “agents” over police “informers.”<sup>152</sup> Her successor, DG Stephen Lander, similarly noted that the MPSB's efforts to counter PIRA terrorism were harmed by a “wish to pursue criminals rather than to obtain information...the police should leave [MI5] to do the intelligence work while they...do what they are internationally respected for, the after-crime investigations.”<sup>153</sup> When MI5 sought to move into anti-organized crime endeavors, its legal advisors justified MI5's role, stating, “whereas law enforcement intelligence is good over ordinary crime because of its short-term dynamic, in organized crime the relationships are more long term, as with espionage.”<sup>154</sup> Critics of MI5's move into criminal investigations and prosecutions noted that, without serious changes, MI5 was equipped to run intelligence operations, not conduct investigations to prosecute crimes.<sup>155</sup>

Concern over MI5's direct involvement to criminal proceedings was not unfounded. Despite recognizing the value of predictive, long-term, operations, MI5 increasingly drifted toward becoming a service that, in practice, incentivized short-term—politically palatable—arrests rather than long-term penetration operations.

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<sup>151</sup> Concept from Clutterbuck, “The United Kingdom,” 141; Peter Gill, *Policing Politics*.

<sup>152</sup> Fielding and Hollingsworth, *Defending the Realm*, 140–141. The former being a long-term penetration of a group from which MI5 could proactively task and extract valuable information, and the latter an occasional source of passively collected information.

<sup>153</sup> Quoted in Andrew, *Defend the Realm: the Authorized History of MI5*, 751.

<sup>154</sup> Quoted in Urban, *UK Eyes Alpha*, 283.

<sup>155</sup> Gregory, “An Assessment,” 197.

Interestingly, whereas most of the post-9/11 American discourse called for an intelligence-led culture imbued with operational patience, critics chided MI5 for being too long-term focused. When MI5 assumed a broader counterterrorism role, detractors contended that its approach was too risk-averse, mistakenly valuing analysis over action; early arrests, they argued, would save more lives than long-term intelligence collection.<sup>156</sup> In time, MI5's approach would mollify this criticism.

Although secrecy prohibits accurate assessment of MI5's operations, media and government accounts lend to the assessment that MI5's drift toward law enforcement responsibilities was not without cost. For example, MI5 experienced a marked increase in demand on its resources due to the increased responsibility to support judicial review and police-like investigations.<sup>157</sup> Additionally, the drift may have unduly shortened the operational capacity of several cases in the early 2000s. In 2004, for example, Operation RHYME thwarted extremist Dhiren Barot's plan to detonate bombs in the London underground. Although Barot reportedly had ties to al-Qaeda leadership, MI5 appears to have sought the quick arrest of Barot rather than running agents into his network.<sup>158</sup> Similarly, in 2008 a MI5 operation led to the capture and conviction of Parviz Khan, an Islamic extremist who, along with four co-conspirators, planned to kidnap and behead a British Muslim Soldier. Although the government called the operation a success, from an intelligence standpoint it yielded less-than-desirable results, including an apparent failure to infiltrate Khan's higher network.<sup>159</sup>

These incidents may prove anecdotal and are partially indicative of MI5's reaction to system pressures, but they also foreshadow MI5's drift toward bird-in-the-hand incentives, which risks curtailing MI5's intelligence operations in lieu of near-term

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<sup>156</sup> Fielding and Hollingsworth, *Defending the Realm*, 11.

<sup>157</sup> U.K. Intelligence and Security Committee, "2010–2011 Intelligence and Security Committee Annual Report," *Cabinet Office* (accessed October 17, 2012) <http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports>.

<sup>158</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 820–821. Prior to his arrest in 2003, 9/11 planner Khalid Sheik Mohammed reportedly had contact with Barot. Disturbingly, Barot claimed he also sought to build a radiological dirty bomb, but failed to acquire the requisite materials. Again, it is worth noting that a full account of MI5's use of Barot's access is likely known only to MI5.

<sup>159</sup> Phytian, "In the Shadow of 9/11," 37.

police actions. Furthermore, there is evidence that new MI5 leadership has incentivized prosecutions as a measure of success: during a public interview in 2009, DG Jonathan Evans praised MI5's support to a significant number of arrests and held up terrorism-related prosecutions as a measure of MI5's success, claiming the arrests "had a chilling effect on the enthusiasm of the networks."<sup>160</sup>

#### **D. THE SERVICE'S ABILITY TO ACQUIRE AND MAINTAIN PUBLIC TRUST**

As outlined previously, in order to achieve its mission an intelligence service must do its part to ensure protection of civil liberties. The service's ability to protect civil liberties is, in part, determined by the service's adherence to law mandate and reflected in the level of trust the citizenry have for the service's intentions and capabilities while acting on their behalf. The service can take measures to help secure and maintain public trust (e.g., openness, diverse hiring and promotion practices, and support to oversight systems). In addition, a service's record of civil liberty infringements and operational "failures" (as perceived by the public) will negatively impact its ability to acquire public trust. Hence, a survey of the service's reputation (as indicated by incidents and public polling) aids in assessing MI5's ability to acquire public trust.

##### **1. MI5's Openness Policies and Public Outreach Efforts**

For most of its history, MI5 operated under a blanket of secrecy. It did not declassify reports for public consumption, nor did the government formally acknowledge that it existed. The official lack of acknowledgement did not help MI5 win trust. Rather it subjected it to conspiracy theories, cynicism, and suspicion.

Like its move into counterterrorism, MI5's move out of the shadows was driven in part by existential need. With the end of the Cold War, MI5 found itself staring down large cuts to its workforce and budget. Compounding matters, during the late 1980s and early 1990s the Service suffered from a series of leaks and tell-all books by former officers who alleged wrongdoing by MI5. As described by author Richard Thurlow,

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<sup>160</sup> Feakin, "Bringing Intelligence into the Light."



MI5's "coming out" allowed it to justify its mission and become more accountable to the public.<sup>161</sup> Following SSA 1989, MI5 advertised for positions under its own name (rather than non-descript "government office" taglines), published an informational pamphlet, and launched a website ([www.MI5.co.uk](http://www.MI5.co.uk)) in an effort to better advertise its mission and acquire public support.<sup>162</sup> Perhaps the greatest step toward securing public trust was MI5's facilitation of access to the DG. MI5 leaders regularly recognized the importance of the media's role as liaison with the public and sought to cultivate the relationship. MI5 also chose to release older case files in an effort to advertise its activities to the public, and on the event of its centennial anniversary MI5 hired historian Christopher Andrew to write its official history.<sup>163</sup> Notably, Andrew's authorized account incorporated events up to 2009, including multiple chapters on MI5's ongoing fight against Islamic terrorism. In offering an authorized interpretation of recent operations, MI5 helped distance itself from the negative stigma attached to its earlier counter-subversion efforts, focusing attention on its more popular counterterrorism mission.<sup>164</sup>

MI5's efforts to enhance public trust via increased openness, however, were not without hiccups. Absent facts and full disclosure, U.K. media was prone to embellish. For example, in the early 1990s *The Times*' former editor published a story claiming that MI5 had once bugged the phones of the Royal Family,<sup>165</sup> and in 2012 *The Daily Mail Online*

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<sup>161</sup> Richard C. Thurlow, "The charm offensive: The 'Coming Out' of MI5," *Intelligence and National Security*, 15:1 (2000), <http://dx.doi.org/10.1080/02684520008432593>, 182–184.

<sup>162</sup> Anthony Richards, "Terrorism and Public Information," in *Homeland Security in the UK*, ed. Paul Wilkinson, 288–290; Clutterbuck, "The United Kingdom," 137.

<sup>163</sup> RUSI News, "Director General of MI5 at RUSI," December 9, 2011 (accessed October 23, 2012) <http://www.rusi.org/news/ref:N4EE211BE2DB21/#.UHZp3xi88hR>. Unlike the United States, which has the Freedom of Information Act (FOIA), until 1997 the United Kingdom refused to release old files (Feakin, "Bringing Intelligence into the Light").

<sup>164</sup> Andrew's account directly addressed MI5's role in contentious actions such as the 1989 shooting of IRA terrorists in Spain and the alleged 2002 torture, by Moroccan officials, of Binyam Mohamed al-Habashi (Binyam claimed that after his arrest in Pakistan he was tortured by Moroccans who worked for MI5. The Binyam case was the first time MI5 was charged in criminal proceedings. The 1989 shooting is discussed below). Niall Firth, "British Security Services have 'Dubious Record on Human Rights' Says Court Ruling Ministers Tried to Suppress," April 9, 2012 (accessed October 11, 2012) <http://www.dailymail.co.uk/news/article-1253958/MI5-dubious-human-rights-record-Binyam-Mohamed-case-says-court.html>; Andrew, *Defend the Realm*, 825.

<sup>165</sup> Urban, *UK Eyes Alpha*, 190.

ran an outdated story claiming that MI5 once sought to “destroy” the Rolling Stones.<sup>166</sup> DG Rimington noted the risk-vs.-gain: “[s]illy press speculation can never be removed entirely, but the Service’s continuing, controlled contact with senior editors and others is helping to shape a better informed and more considered attitude to the Service.”<sup>167</sup>

## 2. MI5’s Hiring Practices

Once known as a service for privileged white males, the above-described endeavor by MI5 to increase representation of minorities in its ranks and shed secretive hiring practices for more meritocratic procedures had mixed results.<sup>168</sup> The public perception of MI5 in the 1990s became that of a service open to most citizens, and in particular one that promoted gender equality; a 2012 MI5 recruitment video went so far as to tout a diverse workforce representative of those it protects.<sup>169</sup> Still, MI5 had difficulty attracting the ethnically-diverse workforce needed to acquire the trust of Britain’s minority populations. For example, it took until 1994 for MI5 to hire its first black officer, and by 1999 only 3.2 percent of officers claimed “black” as their ethnicity

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<sup>166</sup> Philip Norman, “How MI5 plotted to destroy The Stones: The Astonishing Truth Behind the Drug Raid that Saw Jagger Jailed,” *Daily Mail Online*, September 30, 2012 (accessed October 11, 2012) <http://www.dailymail.co.uk/news/article-2210932/How-MI5-plotted-destroy-The-Stones-The-astonishing-truth-drug-raid-saw-Jagger-jailed--gave-Marianne-Faithful-lifelong-notoriety.html>.

<sup>167</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 777.

<sup>168</sup> As noted by Fielding and Hollingsworth, “[t]raditionally, employees were found through an eccentric informal network of family connections, social acquaintances, the military, the colonies and universities. Candidates were tapped on the shoulder, taken aside and asked, in hushed tones, whether they would like to do some secret work for the government” (Fielding and Hollingsworth, *Defending the Realm*, 39). In 1997 MI5 accepted applications via the government’s standardized hiring portal, the Civil Service Fast Stream. Federation of American Scientists, “Security Service MI5 - Budget and Staff,” *Federation of American Scientists Online*, August 6, 1998 (accessed October 3, 2012), <http://www.fas.org/irp/world/uk/mi5/budget.htm>; For example, MI5’s 2000 “A Life Less Ordinary” hiring campaign ran in “ethnic” newspapers such as *New Nation*. Fielding and Hollingsworth, *Defending the Realm*, 45.

<sup>169</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 554; Clutterbuck, “The United Kingdom,” 126. MI5—The Security Service, “Working for MI5,” (accessed October 29, 12) <https://www.mi5.gov.uk/careers/working-at-mi5/video-spotlight-working-for-mi5.aspx>; In the 1980s MI5 hired more women than most of the U.K. private sector and by 2007 44 percent of MI5’s approximately 3,000 officers were women.

and annual reports cited a need for the security services to hire more minorities.<sup>170</sup> Furthermore, as of 2012 a potential gender bias was visible in its leadership, where only 21 percent were women (compared to 40 percent in all grades).<sup>171</sup>

### 3. MI5's Support to Oversight and Control Mechanisms

Until 1989 MI5 was subject to little internal or external oversight. To its credit, as early as 1985, MI5 leadership pressured Prime Minister Margaret Thatcher to place the Service on statutory footing.<sup>172</sup> U.K. leadership initially declined, but when the SSA was raised anew two years later, a persistent MI5 helped draft the Act.<sup>173</sup> The adoption of SSA 1989 helped calm civil libertarians who now felt that MI5's operations had finally been placed on a legal basis provided by elected representatives and offered a formal mechanism for citizen complaints against the service—the Security Service Tribunal.<sup>174</sup>

Initial oversight shortcomings were not limited to the national framework. Into the late 1980s MI5 lacked strong internal review mechanisms and suffered from an atmosphere of right-wing bias and nepotism. MI5 leadership did not welcome dissenting opinions and preferred to squash complaints rather than address them.<sup>175</sup> Hence, MI5 established an “ethical counselor” post, responsible for hearing employee grievances. By self-design, then, and with the support of Parliament, as of 2012 MI5 houses two formal review bodies in addition to a legal counselor working with the DG.

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<sup>170</sup> Clutterbuck, “The United Kingdom,” 126; U.K. Intelligence and Security Committee, “2003–2004 Intelligence and Security Committee Annual Report,” *Cabinet Office*, (accessed October 17, 2012) <http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports>, 20; Pasly Woods, “MI5, British Spy Agency, Named Gay-Friendly Employer,” *Associated Press* via *Huffington Post*, January 11, 2012 (accessed October 11, 2012) [http://www.huffingtonpost.com/2012/01/12/mi5-gay-friendly\\_n\\_1202281.html](http://www.huffingtonpost.com/2012/01/12/mi5-gay-friendly_n_1202281.html). More recently, in 2012, the U.K. equality charity Stonewall ranked MI5 among Britain's “top 100 gay-friendly employers.”

<sup>171</sup> U.K. Intelligence and Security Committee, “2011–2012 Intelligence and Security Committee Annual Report,” *Cabinet Office* (accessed October 17, 2012) <http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports>, 65.

<sup>172</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 756.

<sup>173</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 564. Former DG Duff was instrumental in pressuring Whitehall on SSA 1989.

<sup>174</sup> Urban, *UK Eyes Alpha*, 49.

<sup>175</sup> *Ibid.*, 47. In a 1984 article, former MI5 officer Miranda Ingram observed “an officer who dissents from the official line does not feel encouraged to voice his concern. He feels that to do so would be futile, or unfortunately that it would be detrimental to his career.

#### 4. MI5's Actions that Violated Mandate and Impacted Public Trust

With regard to public image, MI5 has had two faces: the controversial and ridiculed perpetrators of the anti-Leftist, anti-Communist, agendas of the 1960s-1980s and the modern, largely trusted, executors of Britain's domestic counterterrorism mission. Prior to its turn toward counterterrorism in the late 1980s, MI5 was heavily involved in unpopular efforts to counter Communist influences and elements deemed subversive to the government.<sup>176</sup> Critics held that MI5 applied its anti-subversion efforts in a recklessly broad manner that undermined democratic norms. Coupled with official secrecy regarding MI5's existence and agenda, the public relied upon whistleblower accounts and media controversies to judge MI5. Their concerns were not without basis: media and former officers claimed that MI5 kept files on children suspected to be Communist sympathizers after they wrote to the Communist Party in the 1960s and 1970s<sup>177</sup>; and in the 1980s, MI5 targeted the National Union of Mineworkers, the Campaign for Nuclear Disarmament, and the National Council for Civil Liberties (now called Liberty),<sup>178</sup> in violation of the European Court of Human Rights (ECHR).<sup>179</sup> In 1988, former Home Secretary, Roy Hattersley, called MI5 "one of the worst and most ridiculed security services in the Western alliance."<sup>180</sup>

Scandal did not limit itself to MI5's hunting of Communists. In 1988 it was infamously involved in an operation that resulted in the shooting of IRA operatives in Gibraltar, Spain. Although evidence indicated that the event was a tragedy of circumstances (and that the IRA members planned to detonate a car bomb), media

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<sup>176</sup> Labeled a Soviet KGB (*Komitet Gosudarstvennoy Bezopasnosti*) agent by Soviet defector Anatoli Golitsyn, Prime Minister Harold Wilson may have been subject to MI5 surveillance and investigation. Critics also accused MI5 of undermining Wilson during 1974–1976 by leaking false stories of adultery and corruption (a claim MI5 denied). Until closure of the branch in 1994, MI5's F Branch (Section F2) monitored the Communist Party. Fielding and Hollingsworth, *Defending the Realm*, 31–32.

<sup>177</sup> Fielding and Hollingsworth, *Defending the Realm*, 93–95.

<sup>178</sup> Center for Democracy and Technology, "Domestic Intelligence Agencies," 5. MI5 targeted Mineworker leadership during a 1984–1985 strike, claiming that Mineworker leadership desired to bring down the Thatcher government through the strike and had Communist Party ties.

<sup>179</sup> *Ibid.*, 5–6. In 1989 the ECHR judged that MI5 phone tapping operations violated the civil liberties of former U.K. Solicitor General Harriet Harman (Fielding and Hollingsworth, *Defending the Realm*, 297–299).

<sup>180</sup> Urban, *UK Eyes Alpha*, 48.

speculation that MI5 operated under a “shoot-to-kill” policy damaged its public reputation.<sup>181</sup> MI5’s appearance of impartiality was further damaged by accusations that it aided Protestant Loyalist terrorists and covered up evidence of their crimes.<sup>182</sup> Although MI5 made an effort to right its reputation, leaks and tell-all books continued to filter out. MI5’s new generation was repeatedly tried for the sins of its predecessors.<sup>183</sup>

After 1989, MI5 partially unveiled its operations and the public was more easily able to judge the Service’s actions. Furthermore, the Service benefited from the broader popularity of its counterterrorism mission; unlike counter-subversion and counterespionage, the threat of terrorism—and need for MI5—was more apparent (particularly after 9/11 and 7/7). Buoying the Service, in the early to mid-2000s it was credited with foiling several terrorist plots, and in 2007 it won primacy over all U.K. counterterrorism intelligence (now including Northern Ireland).<sup>184</sup>

Despite rising public trust, MI5 bore the brunt of criticism after the 7/7 attacks. Two matters drew pointed criticism: (1) only days before the 7/7 attack, DG Manningham-Buller told a gathering of Parliament members that there was no imminent threat to London<sup>185</sup>; and, (2) prior to the attack, in a separate operation MI5 monitored, and discounted as potential threats, two of the bombers—Mohammad Sidique Khan and

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<sup>181</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 739. MI5’s position was harmed by a documentary titled “Death on the Rock,” which outlined the case against MI5.

<sup>182</sup> Center for Democracy and Technology, “Domestic Intelligence Agencies,” 4. During an investigation into the murder of a Belfast lawyer named Patrick Finucane, MI5 officials lied about their knowledge of collaboration between state security forces and Loyalists paramilitaries. It took a BBC investigation before MI5 turned over evidence to investigators, but not until 12 years after the murder.

<sup>183</sup> Urban, *UK Eyes Alpha*, 43.

<sup>184</sup> Hewitt, *The British War on Terror*, 69. For example, in 2006 MI5 and police forces stopped a plot to bomb seven trans-Atlantic flights out of Heathrow Airport (Andrew, *Defend the Realm: the Authorized History of MI5*, 826).

<sup>185</sup> *Ibid.*, 86.

Shezad Tanweer. A government review placed the blame on “resource constraints” rather than MI5 error, but damage to MI5’s reputation had been done.<sup>186</sup>

## 5. Public Opinion of MI5

According to a sampling of public opinion polls, MI5’s openness policies and counterterrorism activities helped acquire the trust of many British citizens. In a July 2010 survey, 40 percent of respondents expressed “complete” or “a lot of” confidence in the ability of MI5 to “avert a terrorist attack.” By comparison, the U.K. police enjoyed lower confidence ratings.<sup>187</sup> Where MI5 may have earned broad public trust for its counterterrorism capabilities, it suffered in a key demographic—British Muslims. Following 7/7, MI5 intensified its focus on the British Muslim community.<sup>188</sup> The approach included canvassing Muslim communities to monitor extremist sympathizers. Known as “Project Rich Picture,” MI5 categorized 8,000 people as potentially sympathetic (.5 percent of the British Muslim population).<sup>189</sup> The project caused concern

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<sup>186</sup> Aidan Kirby, “Domestic Intelligence Agencies After September 11, 2001: How Five Nations Have Grappled with the Evolving Threat,” in *Considering*, ed. Brian Jackson, 154–155; Clutterbuck, “The United Kingdom,” 139; Mark Phythian, “In the Shadow of 9/11,” 33. MI5’s protection of civil liberties came under scrutiny over reports it was aware of hostile interrogation of a U.K. citizen arrested in Pakistan following the 7/7 bombings. Pakistani authorities have arrested UK citizens or dual-citizens who were then, according to those arrested, interrogated by MI5 officers. In the wake of U.S. interrogation scandals, the British public was quick to indict MI5 for its possible participation.

<sup>187</sup> Jessica Henry, “On Her Majesty’s Secret Service,” *YouGov.com*, May 18, 2012 (accessed October 11, 2012) <http://yougov.co.uk/news/2012/05/18/her-majestys-secret-service/>. A 2012 Yougov.com survey asked a panel of citizens about their view of British security services. It showed a distinct moderation of views. Most indicated that the security services were “protecting the nation well, in light of the relative lack of successful terrorist activity in Britain...” By contrast, 37 percent of respondents gave MPSB the same confidence, while local police garnered only 27 percent approval.

<sup>188</sup> Between 2000 and October 2004, 700 people of Muslim backgrounds were arrested. 100 were charged with offenses, but only six were convicted. Frank Gregory, “An Assessment,” 191; MI5 also announced that it would “lower the surveillance threshold” in Muslim communities, thereby expanding operations into identifying potential terrorist communities. Phythian, “In the Shadow of 9/11,” 49.

<sup>189</sup> Jason Bennetto, “MI5 Conducts Secret Inquiry into 8000 al-Qaeda ‘Sympathizers’,” *The Independent*, July 3, 2006 (accessed October 25, 12) <http://www.independent.co.uk/news/uk/crime/mi5-conducts-secret-inquiry-into-8000-alqaida-sympathisers-406435.html>; Hewitt, *The British War on Terror*, 81.

among Muslim communities and eroded trust. Notably, a 2007 poll of British Muslims indicated that 52 percent of respondents believed the security services falsified evidence in order to acquire convictions of 7/7 suspects.<sup>190</sup>

This distrust was not without consequence. MI5 had difficulty recruiting minority officers,<sup>191</sup> and there was also indication that MI5 had failed to acquire agents within Muslim extremist networks. Although secrecy limits collection of data on HUMINT penetrations, it may be indicative of a shortfall that in 2007 both the Deputy Assistant Police Commissioner and (then former) DG Manningham-Buller noted a need to increase agent networks in the Muslim community.<sup>192</sup> As noted by Hewitt, MI5 failed to acquire Muslim recruits because it failed to win the trust of the Muslim community.<sup>193</sup>

#### **E. THE SERVICE'S COLLABORATION AND INFORMATION SHARING WITH COMMUNITY COUNTERPARTS**

As outlined earlier, in order to carry out its counterterrorism mission a service must collaborate and share information with its national security counterparts. MI5 was known for working closely with its partners. A general review of MI5's relationship with its cohorts, its secondment of officers, regional coordination efforts, and support to coordinating bodies demonstrates the veracity of that claim. MI5's coordination efforts, however, were not perfect. It struggled to update its information sharing systems and suffered from a lasting culture of secrecy.

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<sup>190</sup> Mark Tran, "Poll: Government had Role in July 7 Bombings," *The Guardian*, June 5, 2007 (accessed September 29, 2012) <http://www.guardian.co.uk/uk/2007/jun/05/religion.july7>. To its credit, MI5 attempted to reach out to the Muslim community. For example, in 2005 DG Dame Eliza Manningham-Buller held a public meeting at Thames House with the head of the Muslim Council of Britain. The meeting was held, in part, for the Council to express concerns over security activities in, or with regard to, the Muslim community. Gregory, "An Assessment," 191.

<sup>191</sup> U.K. Intelligence and Security Committee, "Intelligence and Security Committee Annual Reports."

<sup>192</sup> Hewitt, *The British War on Terror*, 107.

<sup>193</sup> Recruitment of Muslims was unsuccessful despite their lack of support for terrorism. For example, a 2006 survey found that only seven percent of British Muslims polled saw the 7/7 bombers as martyrs and only 16 percent saw their cause as valid. That MI5 was unable to turn potential support for its counterterrorism mission into recruitments indicates an inability to secure trust within the Muslim community. Hewitt, *The British War on Terror*, 108–111.

## 1. MI5's Work with Community Partners

Lacking in the executive powers of arrest, and responsible for U.K. domestic counterterrorism intelligence, MI5 is forced to work closely with Britain's 56 law enforcement services.<sup>194</sup> In the early 1970s, the rise of transnational and domestic terrorism gave impetus to greater cooperation between the police and intelligence agencies. Unlike counterespionage where the police were needed primarily at the end of an investigation (the arrest phase), counterterrorism as applied in the United Kingdom called for immediate and in-depth cooperation.<sup>195</sup>

After 9/11 and 7/7, the impetus for collaboration rose. MI5 claimed to track over 200 extremist groups and more than 1,600 people in the years since 7/7. This high number necessitated a robust inter-agency coordination process.<sup>196</sup> There are many examples of this positive cooperation domestically. In 1997 MI5 worked closely with Metropolitan Police's Anti-Terrorism Branch to combat an IRA bombing campaign, and an April 2000 MI5 Staff Opinion Survey indicated that collaboration with MI6 was the best it had been since the Service's creation in 1909.<sup>197</sup>

Terrorism's causes were not unique to England and MI5 adjusted to coordinate with international partners. Several examples stand out. For example, in the 1980s-1990s, per Andrew, "[f]or the Security Service, [the IRA's] largely unsuccessful continental campaign had the great advantage of strengthening its collaboration with other European security and intelligence services."<sup>198</sup> Similarly, the Service worked closely with American FBI in support of anti-IRA arms trafficking operations, and after al-Qaeda's

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<sup>194</sup> Burch, "A Domestic Intelligence Agency for the United States?" 6; Chalk and Rosenau, *Confronting the Enemy Within*, 12; Masse, *Report for Congress: Domestic Intelligence in the United Kingdom*, 6.

<sup>195</sup> Clutterbuck, "The United Kingdom," 119–120.

<sup>196</sup> Burch, "A Domestic Intelligence Agency for the United States?" 6.

<sup>197</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 808; Hewitt, *The British War on Terror*, 90; U.K. Intelligence and Security Committee, "2007–2008 Intelligence and Security Committee Annual Report," 22. The 2007–2008 ISC report called the SIS-MI5 bilateral relationship "very good," and noted that it was good long before 9/11. The Anti-Terrorism Branch was often referred to by its official designator, SO13.

<sup>198</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 748, 772. Operations with French DST in the early 1990s led to the capture of IRA arms caches and disruption of IRA operations in France.



attack on U.S. Embassies in Africa in 1998 MI5 worked with American services against Osama Bin Laden and his network.<sup>199</sup> Coordination was a necessity to combat the threat of terrorism and the Service made notable efforts of its own accord, including moving internal resources to better support inter-agency operations.<sup>200</sup>

## **2. MI5's Secondments and Regional Offices**

Perhaps most indicative of the Service's ability to share information and coordinate operations is its cross-pollination with sister services. MI5 regularly allowed secondments to its ranks. In 1998 at least 100 officers from outside MI5 worked on assignment to the organization, and when MI5 took over responsibility for Irish-terrorism on the mainland, MI5 brought in MPSB officers on secondment.<sup>201</sup> Of further note, by 2006 MI6 officers made up 10 percent of MI5 counterterrorism teams.<sup>202</sup>

In addition to bringing outside officers into its midst, MI5 made an effort to push its officers out into the community. In response to its expanding counterterrorism role, in 2002 MI5 began to open regional offices outside of London—expressly to improve communication and coordination with local police. One police officer commented that the new regional offices “will definitely increase our ability to respond to the intelligence generated by the Security Service.”<sup>203</sup>

## **3. MI5's Support to Coordinating Bodies**

In addition to reaching outward, MI5 allocated resources toward internal mechanisms responsible for cross-agency coordination. Most notable, in 2003 MI5 became the responsible party for the Joint Terrorism Analysis Center. The JTAC

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<sup>199</sup> Ibid., 749, 803.

<sup>200</sup> Gregory, “An Assessment,” 194. After the attacks in America in 2001, MI5 moved resources to expand the unit responsible for supporting inter-agency communication (Section T4, within T Branch).

<sup>201</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 776; Clutterbuck, “The United Kingdom,” 126.

<sup>202</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 824; U.K. Intelligence and Security Committee, “2007–2008 Intelligence and Security Committee Annual Report,” 22

<sup>203</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 817–8; Hewitt, *The British War on Terror*, 97; Clutterbuck, “The United Kingdom,” 121, 126, 131 (quote). MI5 planned to have 25 percent of its force working outside of London by 2011.

included representatives from 12 agencies and was responsible for coordinating across agencies in support of joint-CT endeavors.<sup>204</sup> Along with JTAC, MI5 hosted the Center for the Protection of National Infrastructure (CPNI),<sup>205</sup> the National Security Advice Center (NSAC), a multi-agency staffed organization that coordinates counterterrorism security advice to the business and private sector community,<sup>206</sup> and the National Infrastructure Security Coordination Center (NISCC), responsible for coordination of cyber- and communications-related informative pieces.

#### **4. MI5's Missteps**

While MI5 had notable successes in sharing information and coordinating with counterparts, in order to communicate and share information, an intelligence service must possess an adequate information technology (IT) infrastructure. On this matter MI5 fell short. For example, MI5's counterterrorism database, known as "Durbar," was unable to deal with the volume of counterterrorism intelligence fed into the system and may have led to dangerous miscommunications regarding terrorist suspects.<sup>207</sup>

MI5's shortcomings were not limited to its IT systems. Despite MI5's new focus on terrorism and the need for coordination, it was still a secretive organization. Critics maligned MI5 for valuing secrecy over cooperation, compartmentalization over sharing of information. In 1992, a RUC police officer summarized the issue: "MI5's agenda is built around counter-espionage: a slow process, keeping information for themselves long after it has squeezed things dry."<sup>208</sup> For example, MI5 intercepted phone calls between

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<sup>204</sup> Burch, "A Domestic Intelligence Agency for the United States?" 6–7.

<sup>205</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 817–8; Clutterbuck, "The United Kingdom," 127; Hewitt, *The British War on Terror*, 97.

<sup>206</sup> Gregory, "An Assessment," 194.

<sup>207</sup> U.K. Intelligence and Security Committee, "Intelligence and Security Committee Annual Reports"; Fielding and Hollingsworth, *Defending the Realm*, 55. Per Fielding and Hollingsworth, "...intelligence on terrorist targets...has been lost or missed because of Durbar's flaws."

<sup>208</sup> Quoted in Fielding and Hollingsworth, *Defending the Realm*, 131.

“Shoe Bomber” Richard Reid and 9/11 hijacking suspect Zacharias Moussaoui. When such came to light, detractors maligned MI5’s failure to warn MPSB Police about Reid’s connections.<sup>209</sup>

MI5’s flex toward counterterrorism, in particular its assumption of responsibility for Northern Ireland-related counterterrorism, created its closest and most strained relationships. MI5 necessarily increased communication with the RUC/PSNI and MPSB given its limited ability to run operations in Northern Ireland. Absent experience and agent networks, MI5 looked to its police partners. Whitehall leadership often highlighted MI5’s relationship with the police as a success, but some frustrations remained at the working level; predictably, there were police/intelligence jurisdictional and cultural rifts. In 2003 a report from the Chief Constable of the PSNI claimed that the police-MI5 relationship was strained by “mismatches of expectations [of responsibilities] on both sides.”<sup>210</sup> The police also accused MI5 officers of looking down upon their “blue collar” counterparts and as glory hounds who appeared on the scene when it suited their political purposes.<sup>211</sup>

## **F. CONCLUSION**

This chapter assessed in MI5 the four characteristics commensurate with those of an ideal domestic counterterrorism intelligence service as dictated by the post-9/11 discourse. First, although it did not begin as a counterterrorism service, MI5 was able to transform itself into one. From 1986 through 2012 MI5 made a concerted, and arguably successful, effort to redirect its operational focus through a shift in hiring practices, reorganization of operational branches to better focus on terrorism in domestic and transnational forms, enhanced communication with counterterrorism partners, and aggressive reorientation of the resources provided by the government. That said, and

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<sup>209</sup> Center for Democracy and Technology, “Domestic Intelligence Agencies,” 3; Fielding and Hollingsworth, *Defending the Realm*, 142–143.

<sup>210</sup> Center for Democracy and Technology, “Domestic Intelligence Agencies,” 3.

<sup>211</sup> Fielding and Hollingsworth, *Defending the Realm*, 137. In 2007, the head of Scotland Yard Counterterrorism, Peter Clarke, said “[t]here can be no doubt that the most important change in counterterrorism in the U.K. in recent years has been the development of the relationship between the police and the Security Service” (Andrew, *Defend the Realm: the Authorized History of MI5*, 848).

acknowledging MI5's successes after 9/11, its efforts did not allow it to fully predict and prevent the rise of Islam extremists within its borders, including the attacks of 7/7.<sup>212</sup>

Second, MI5 demonstrated the characteristics of an intelligence-led culture in its history, hiring and training programs, and incentives through the 1980s. That said, its more recent record with HUMINT was decidedly mixed. Despite its efforts, the mechanisms employed by MI5 did not appear to yield sources in Islamic extremist communities. Terrorist recruitments are notoriously difficult and secrecy forbids drawing a firm conclusion on the matter. Notably, after the 1980s, the grip of its counterterrorism mission pulled MI5 into the U.K. court system and by 2012 it appeared that the Service was drifting away from predictive intelligence and long-term operations toward law enforcement-minded incentives such as arrest and prosecution.

Third, with regard to securing the public trust, MI5 had a less-than-effective result. Although it implemented mechanisms to put itself on statutory footing, "demystified" the service, and incorporated internal oversight bodies, as evidenced by its hiring and agent recruiting frustrations, the Service was unable to secure the trust of key minority communities. MI5's frustrated efforts, however, were limited more by a legacy of reputed civil liberty infringements, and seemingly indiscriminate surveillance of the British Muslim community after 7/7, than the inherent efficacy of its mechanisms.

Lastly, MI5's sharing of information and collaboration with national security partners may be assessed as excellent. Driven by operational need, MI5 enhanced existing communication channels and exchanged officers, as well as hosted and developed elements (e.g., regional offices) to enhance coordination at all levels. MI5's greatest shortfall was its inability to upgrade and standardize its computer infrastructure in accordance with required government standards. This study will now turn toward the other potential model for the United States, the Australian Security and Intelligence Organization.

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<sup>212</sup> Center for Democracy and Technology, "Domestic Intelligence Agencies," 2. In a 2002 report to the British House of Commons Foreign Affairs Committee, counterterrorism scholar Paul Wilkinson accused MI5 of being "too preoccupied with Northern Ireland issues" and failing to focus adequately on the threat al-Qaeda presented to the United Kingdom.

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### III. THE AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION

Along with MI5, the Australian Security Intelligence Organisation is often mentioned as a potential model for an American domestic intelligence service.<sup>213</sup> Australia and the United States share democratic ideals, cultural norms, and a history of security policy cooperation. As part of a federal parliamentary democracy, ASIO is faced with similar challenges regarding civil liberties and jurisdiction as services in the United States.<sup>214</sup> Furthermore, together with services in America and Britain, the Organisation spent much of its formative years interdicting Cold War foes. More recently, following the 2002 attacks in Bali, Indonesia, Australia became directly embroiled in the fight against international Islamic extremism. Additionally, its support of U.S. operations in Afghanistan and Iraq, intervention in East Timor, and counterterrorism efforts in Southeast Asia increased the threat of terrorism to Australia. For these reasons, ASIO presents a useful and applicable case study.<sup>215</sup>

Like the previous chapter, the following evaluation calls upon official documents and secondary-source literature to assess the presence of ideal characteristics in the Organisation, a well-established domestic intelligence service. This chapter too will provide an overview of the service, before evaluating ASIO's counterterrorism focus, intelligence-led culture, effort to secure the public trust, and collaboration with community counterparts.

#### A. OVERVIEW OF THE SERVICE

Australia's national intelligence collection apparatus consists of a civilian external collection service (the Australian Secret Intelligence Service; ASIS), an imagery service

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<sup>213</sup> "ASIO" and "the Organisation" are used interchangeably in this study. For examples of ASIO cited as a model for a U.S. domestic intelligence service, see, among others: Peter Chalk, "Australia" in *Considering*, ed. Brian Jackson, 13–42.; Burch, "A Domestic Intelligence Agency for the United States?"; and Trevorton, *Reorganizing U.S. Domestic Intelligence*.

<sup>214</sup> Australia is a federal parliamentary democracy and a constitutional monarchy.

<sup>215</sup> In 2002, Australia's military intervention resulted in the creation of the, Catholic, Democratic Republic of *Timor Leste* (East Timor) from Muslim Indonesia. Chalk, "Australia," 13.

(Defence Imagery and Geospatial Organisation), a signals intelligence service (the Defence Signals Directorate; DSD), and ASIO, the domestic security service. These services provide raw intelligence and analysis to community counterparts and the government via the National Threat Assessment Centre (NTAC), and the Office of National Assessments (ONA; a policy-level office that collates assessments and determines collection priorities).<sup>216</sup> In addition to its intelligence counterparts, ASIO works closely with police from each of Australia's six states, two mainland territories, and seven offshore areas, in addition to the Australian Federal Police (AFP).<sup>217</sup>

ASIO operates with Parliamentary authority, under the general supervision of the Parliamentary Joint Committee on Intelligence and Security (PJCIS). The Organisation is directly under the control of the Director General of Security (DG). The DG is appointed by the Prime Minister, but is immediately responsible to the Attorney General. The Attorney General issues guidelines and approves warrants for the service. The DG, however, has the power to determine ASIO's operational priorities and methods. ASIO's staff is divided into eleven divisions.<sup>218</sup> Figure 4 depicts ASIO's full organizational structure. Figure 5 depicts its intelligence assessment and collection divisions.

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<sup>216</sup> Australian Security Intelligence Organisation, "Publications—Director-General's Address to the Security in Government Conference - 'A Step Ahead: The Challenge for Counter-Terrorism'," May 9, 2006 (accessed November 27, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2006/A-Step-Ahead-The-Challenge-for-Counter-Terrorism.html>.

<sup>217</sup> ASIO is also well known for having worked with the Australian Protective Service (APS). The APS was an independent service until 2002 when it became a division of the AFP. Central Intelligence Agency World Factbook, "Australia," (accessed January 7, 2013) <https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>; D'a Henderson, *Brassey's International Intelligence Yearbook 2003 Edition*, 11.

<sup>218</sup> Australian Security Intelligence Organisation, "About ASIO," (accessed November 6, 2012) <http://www.asio.gov.au/About-ASIO/Overview.html>. Ceremonially, but official, the DG is appointed by the U.K. Queen's Governor General on recommendation of the Prime Minister.

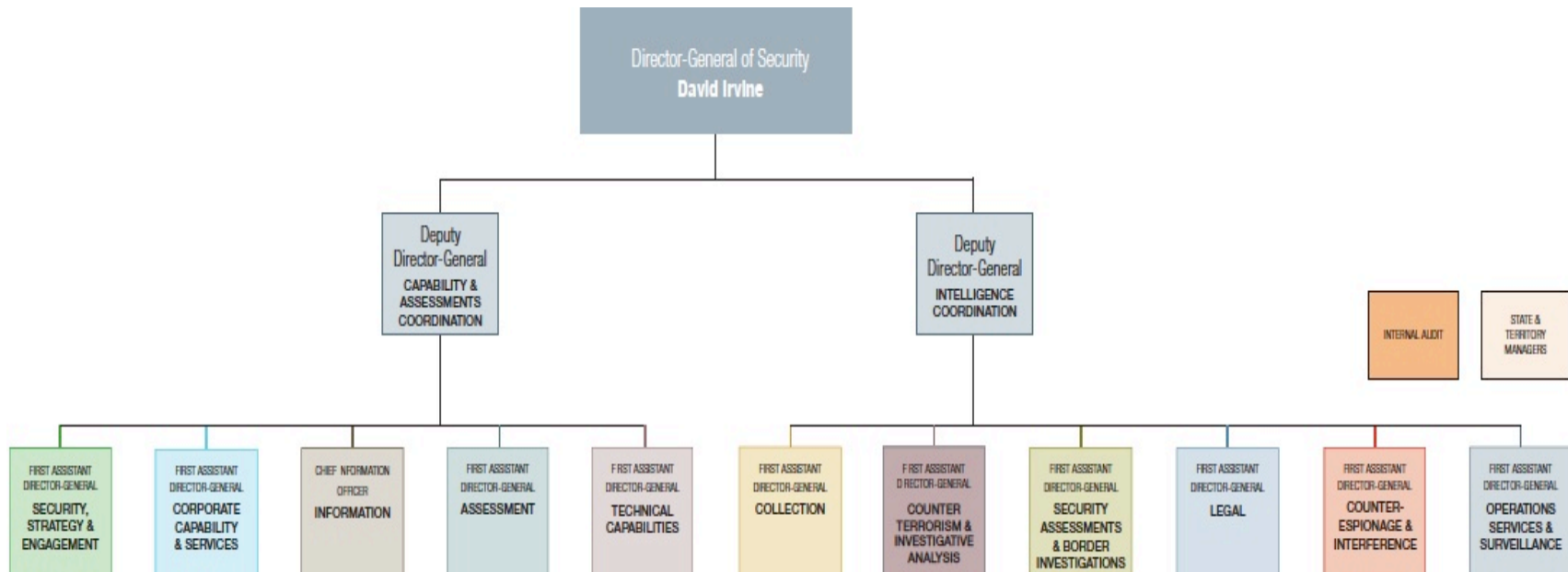


Figure 4. Australian Security Intelligence Organisation Structure

From: Australian Security Intelligence Organisation, “About ASIO—Organisational Structure” (accessed November 6, 2012) <http://www.asio.gov.au/About-ASIO/Overview.html>.



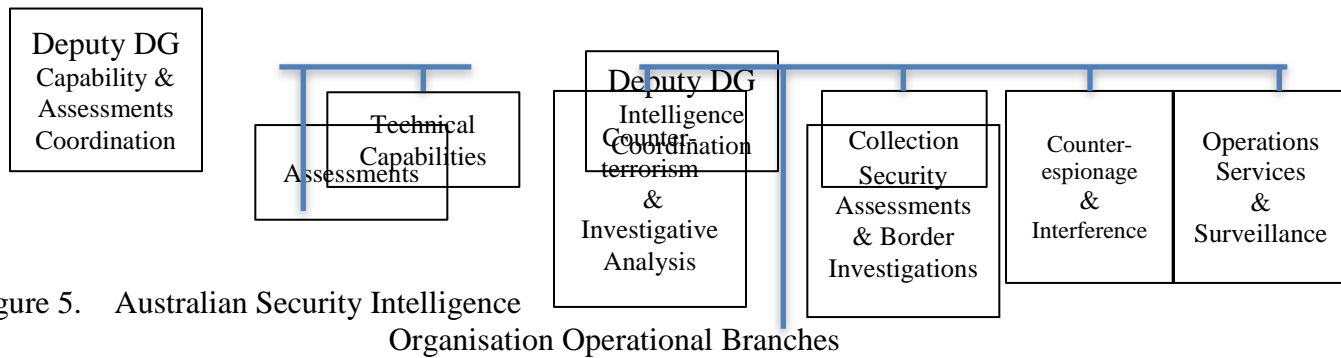


Figure 5. Australian Security Intelligence Organisation Operational Branches

After: Australian Security Intelligence Organisation, “About ASIO—Organisational Structure,” (accessed November 6, 2012) <http://www.asio.gov.au/About-ASIO/Overview.html>.

Preceded by a string of *ad hoc* wartime services, the Organisation is Australia’s oldest security service. ASIO was established by the Charter of the Australian Security Intelligence Organization of 1949 and given statutory footing in the Australian Security Intelligence Organisation Act of 1956. Formed in response to British and American concern over post-WWII Soviet espionage—in particular a spy ring operating out of Canberra and worry about the security of Alliance information. The government charged ASIO with “the defence of the Commonwealth and its territories from external and internal dangers arising from attempts at espionage and sabotage, and from actions of persons and organisations, whether directed from within or without the country which may be judged to be subversive of the security of Australia.”<sup>219</sup> Tasked generally to address external and internal threats, ASIO directed operations inward. As legal scholar Jenny Hocking noted, “[w]ithin five years of its tenuous inauguration, [ASIO] was concentrated strongly on domestic security rather than on foreign espionage operations.”<sup>220</sup>

<sup>219</sup> ASIO’s charter loosely defined its work as securing Australia. A July 6, 1950, directive from the Prime Minister to the Director-General of Security, as quoted in Australian Security Intelligence Organisation, “Information Briefs—The Concept of Security Intelligence,” (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Information-Briefs.html>, 3; Nicholas Grono, “Australia’s Response to Terrorism,” Central Intelligence Agency Center for the Study of Intelligence (accessed November 28, 2012) <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/csi-studies/studies/vol48no1/article03.html>.

<sup>220</sup> Jenny Hocking, *Terror Laws: ASIO, Counter-terrorism and the Threat to Democracy* (Sydney, Australia: University of New South Wales Press Ltd, 2004), 12–14; Grono, “Australia’s Response to Terrorism”; Chalk, “Australia,” 15.

The foundation of ASIO's modern mandate is the Australian Security Intelligence Act of 1979 (ASIO Act of 1979), which expanded its mission to include counterterrorism as well as preventing sabotage and foreign subversion.<sup>221</sup> In 1986, Parliament amended the Act, giving ASIO the power to collect foreign intelligence regarding external threats and providing advice on infrastructure, personnel, and information security.<sup>222</sup> As of 2012, ASIO defined its mandate as "protection of Australia and Australians from espionage, sabotage, politically motivated violence, promotion of communal violence, attacks on Australia's defence systems, and foreign interference; and of Australia's territorial and border integrity from serious threats."<sup>223</sup>

To fulfill its mission ASIO collects and assesses intelligence (from both human and technical sources), engages foreign liaison, provides security advice to government and businesses, investigates security threats, maintains a tactical and analytical counterterrorism capability, and provides security assessments regarding visitor and immigrant visas.<sup>224</sup> Like MI5, ASIO generally lacks policing powers; the ASIO Act of 1979 forbids ASIO to carry out policing duties.<sup>225</sup> That said, beginning with expansion of its powers in 2001, ASIO has acquired limited ability to detain and question terrorism suspects (with a warrant and support of the police) and works hand-in-hand with the AFP, which has related and overlapping counterterrorism functions.<sup>226</sup>

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<sup>221</sup> David Martin Jones and Carl Ungerer, "Australia," in *PSI Handbook*, eds. Stuart Farson et al., 169; Hocking, *Terror Laws*, 13.

<sup>222</sup> Australian Security Intelligence Organisation, "Legislation," (accessed December 10, 2012) <http://www.asio.gov.au/About-ASIO/Legislation.html>; Eye Spy Intelligence Magazine, "Australia Security Services and Selected Government Offices," 2011 (accessed December 12, 2012) <http://www.eyespyimag.com/intelaustralia.htm>.

<sup>223</sup> Australian Commonwealth Law, Australian Security Intelligence Organisation Act of 1979 (accessed November 6, 2012) <http://www.comlaw.gov.au/Details/C2012C00260>. Hereafter referred to as the ASIO Act of 1979; Australian Security Intelligence Organisation, "Information Briefs—ASIO Overview," (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Information-Briefs.html>; Australian Security Intelligence Organisation, "About ASIO"; Chalk, "Australia," 16.

<sup>224</sup> Australian Security Intelligence Organisation, "Information Briefs—ASIO Overview," 1–2.

<sup>225</sup> Per the ASIO Act of 1979.

<sup>226</sup> Chalk, "Australia," 15; Hocking, *Terror Laws*, 167.

## **B. COUNTERTERRORISM AS THE SERVICE'S MISSION**

ASIO began as a counterespionage service that viewed security in broad terms to include counter-subversion, counter-sabotage and, later, counterterrorism. Although within its mandate since 1979, ASIO's focus on counterterrorism was subordinate to traditional intelligence targets such as espionage. That changed in 2002 when Jemaah Islamiyah (JI) terrorists targeted Australians in Indonesia, with devastating impact. ASIO's gaze now centers on terrorism, for which it has a transnational appreciation. ASIO's turn toward counterterrorism was not without complication. It incentivized a culture of addressing terrorist targets in a manner that raised concern among civil liberty advocates and, like MI5, a diverse work force remained an elusive goal.<sup>227</sup>

### **1. ASIO's Origin, History, and Mission**

Counterterrorism is relatively new to ASIO. From 1949 until the decline of the Soviet Union, counterespionage and the countering of Communist and leftist-Socialist influences took center stage.<sup>228</sup> While early government commissions acknowledged the threat of politically motivated violence, it was not until the late 1970s that ASIO had immediate cause to remold its focus.<sup>229</sup> In 1978 a protest movement tied to a sect of the Indian religious group Ananda Marga targeted the first Australian Commonwealth Heads of Government Regional Meeting, detonating a bomb outside of the Sydney Hilton Hotel that killed three people. The attack reinforced recommendations made by the 1977 Royal Commission on Intelligence and Security (RCIS)—that the security services needed to better recognize and address the rising threat of terrorism. Subsequently, the ASIO Act of

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<sup>227</sup> Chalk, "Australia," 15.

<sup>228</sup> ASIO's 1949 charter broadly encompassed protection of the Commonwealth "from external and internal dangers arising from attempts at espionage and sabotage, or from actions of persons and organizations, whether directed from within or without the country, which may be judged to be subversive of the security of the Commonwealth." Quoted in Hocking, *Terror Laws*, 25; Chalk, "Australia," 14; Jones and Ungerer, "Australia," 169.

<sup>229</sup> Eye Spy Intelligence Magazine, "Australia Security Services and Selected Government Offices"; Hocking, *Terror Laws*, 121.

1979 extended the Organisation's mandate to include counterterrorism, "whether directed from, or committed within, Australia or not."<sup>230</sup>

Despite the extended mandate, the Organisation did not prioritize terrorism over other threats and maintained a cornucopia of tasks. Notwithstanding the politicized response to the Hilton bombing, ASIO still had little cause to direct resources at terrorism; internal political unrest and Soviet spies seemed a much greater threat, while terrorism was limited to a handful of infrequent incidents that consisted mostly of foreign actors attacking non-Australian targets.<sup>231</sup> With retraction of the Soviet threat in the early 1990s ASIO struggled to justify its utility. In 1992 the Prime Minister ordered a review of Australia's intelligence apparatus. The review found that ASIO's role remained valid, but a decline in espionage threats meant that its resources could be sharply reduced.<sup>232</sup> During much of the 1990s ASIO focused on information security, counterespionage, and support to immigration authorities. That changed in 2000 when Australia hosted the Olympics, during which ASIO made delegation security and preventing terrorism its top priority. Consequently, when the 9/11 attacks on America occurred, ASIO was already looking at terrorism. In 2001 ASIO acquired the authority to participate in secret detentions and enhanced interrogations. By the end the year, ASIO had become the lead agency for Australian counterterrorism intelligence.<sup>233</sup>

ASIO had little time to adjust to its new role. In October of 2002 Australia was thrust into the global terrorism fray when explosions on the island of Bali, Indonesia,

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<sup>230</sup> In 1979, following recommendations from the 1977 RCIS and a 1978 Protective Security Review, countering terrorism was incorporated into ASIO's official mandate as part of the ASIO Act of 1979. ASIO Act of 1979; Hocking, *Terror Laws*, 40, 100, 142–143.

<sup>231</sup> Incidents included: in the early 1970s Croat separatists (Ustashis) attacked Yugoslav offices in Australia; in 1980 Armenian terrorists killed the Turkish Consul General in Sydney; in 1982 the Israeli Consulate in Sydney was bombed; and in 1986 a group known as the Greek-Bulgarian-Armenian Front detonated a car bomb in front of the Turkish Consulate in Melbourne. Eye Spy Intelligence Magazine, "Australia Security Services and Selected Government Offices"; Hocking, *Terror Laws*, 48, 121.

<sup>232</sup> Grono, "Australia's Response to Terrorism"; Hocking, *Terror Laws*, 157.

<sup>233</sup> Grono, "Australia's Response to Terrorism"; Hocking, *Terror Laws*, 225.

killed 88 Australians and wounded many more.<sup>234</sup> Following the attacks, Australia transferred power to legislate counterterrorism measures from the states to Canberra, and the Terrorism (Commonwealth Powers) Act of 2002 centralized counterterrorism under federal authority—ASIO stood at the center.<sup>235</sup> After Bali 2002 ASIO went on the counterterrorism offensive. It investigated JI and al-Qaeda associates in Australia and conducted a series of raids during the subsequent month. ASIO's focus since has often been on Islamic extremists and related terrorist threats at home and abroad, and with due cause: as highlighted by ASIO in a 2005 Annual Report, the period of 2000–2005 brought at least one attack each year against Australian interests.<sup>236</sup>

ASIO's work, however, bled into areas only peripherally associated with terrorism. Moreover, the further it got from the attacks of 2002, the more the Organisation broadened its applied definition of terrorism, pulling issues of immigration and counter-subversion into the counterterrorism orbit, in what critics assessed was an inappropriate and ineffectual manner.<sup>237</sup> For example, the service increasingly involved itself in marginally terrorism-related security screening for intending immigrants and used its counterterrorism authorities to expand its monitoring of a “persistent but small sub-culture of racist and nationalist extremists in Australia” as well as political activist groups.<sup>238</sup> Notably, in 2012 ASIO was accused by environmental groups of unduly investigating their members and surveiling peaceful environmental protests. Although justified by some as warranted for national security reasons, this expansion drew

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<sup>234</sup> Jemaah Islamiyah associated terrorists detonated bombs at Sari Club and Paddy's Bar on Kuta Beach Bali, a renowned tourist hangout. Bali was known as a hot spot for Australian tourists and Australia considered itself the likely target of al-Qaeda-affiliated JI. Its fears were validated when Osama bin Laden cited Australia as the target: “[w]e warned Australia before not to join in the war in Afghanistan, and against its despicable effort to separate East Timor. But it ignored this warning until it woke up to the sounds of explosions in Bali...” (quoted in Grono, “Australia's Response to Terrorism”).

<sup>235</sup> Hocking, *Terror Laws*, 232–233.

<sup>236</sup> Grono, “Australia's Response to Terrorism”; Jones and Ungerer, “Australia,” 174. Of note, in 2004 JI terrorists exploded a devastating bomb in front of the Australian embassy in Jakarta, in 2005 Australia's mission in Iraq was attacked and Bali was struck anew, and in July 2009 Indonesian suicide bombers targeted hotels in Jakarta, again killing Australian citizens.

<sup>237</sup> Hocking, *Terror Laws*, 8–9.

<sup>238</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2010–11,” October 11, 2011 (accessed November 28, 2012) <http://www.asio.gov.au/Publications/Report-to-Parliament/Previous-Reports.html>.

criticism from others who raised concern over protection of civil liberties.<sup>239</sup> It also highlights the potential for ASIO's counterterrorism efforts (and its definition of what constitutes terrorism) to become too diverse, and its cause for targeting too diluted, to be considered focused and effective.

## **2. ASIO's Counterterrorism-led Incentives**

ASIO's counterterrorism-driven incentives are demonstrated in its reporting, efforts to expand its authorities, and official messages. For example, in its 2011–2012 report to Parliament, ASIO cited terrorism “as the most immediate threat to the security of Australians and Australian interests.”<sup>240</sup> In addition, ASIO's assessments in 2011–2012 were overwhelmingly focused on counterterrorism: it produced 153,644 counterterrorism security assessments compared to 27,801 personnel assessments and 24,097 terrorism-related visa assessments (a 40 percent increase in terrorism reporting from the previous year).<sup>241</sup> Furthermore, the Organisation incorporated missions such as border security and counter-proliferation under the counterterrorism umbrella, and sought the expansion of its counterterrorism powers.<sup>242</sup> Namely, during 2001–2005 DG Dennis Richardson (1996–2005) sought authority for computer hacking and the tracking of international money transfers, and in 2011–2012 DG David Irvine (2009-present)

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<sup>239</sup> For example, according to the news site *The Age*, “ASIO has increased monitoring of protests that might disrupt energy infrastructure” (Philip Dorling, “ASIO Eyes Green Groups,” *The Age*, April 12, 2012 (accessed November 28, 2012) <http://www.theage.com.au/opinion/political-news/asio-eyes-green-groups-20120411-1wsba.html>).

<sup>240</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” October 11, 2011, (accessed November 28, 2012 <http://www.asio.gov.au/Publications/Report-to-Parliament/Previous-Reports.html>), vii; Frank Cain, *Terrorism and Intelligence in Australia* (Australia: Australian Scholarly Publishing, 2008), 233.

<sup>241</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” xi and 19.

<sup>242</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” February 28, 2007 (accessed November 27, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2007.html>, 37; Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12.” For example, after 9/11 ASIO increased support to its counter-proliferation efforts but geared them toward counterterrorism.

requested enhanced powers of intercept in support of counterterrorism.<sup>243</sup> These measures indicated a service that incentivized and prioritized counterterrorism.

Incentives, however, are not easily institutionalized. They require a cultural foundation built over time. ASIO's original incentives were cemented in counterespionage and counter-subversion, hindering efforts to incentivize counterterrorism. For example, according to unofficial ASIO historian Frank Cain, when former DG Peter Barbour (1970–1975) attempted to turn ASIO away from old threats toward the new, he met “heavy resentment by a staff still stuck in the essential values of the Cold War and the ‘communist menace.’”<sup>244</sup> As intelligence and security scholars David Martin Jones and Carl Ungerer suggested, “prior to September 2001, the Australian intelligence community considered political or religiously motivated violence...to be largely a nuisance activity akin to piracy or people smuggling and one that required a police response rather than a strategic solution.”<sup>245</sup> In a 2005 speech DG Paul O’Sullivan (2005–2009) acknowledged that the Organisation had been naïve regarding extremist Islam when he described ASIO’s pre-9/11 incentives as directed toward “what could loosely be termed ‘traditional targets’...that could be identified and investigated using tried and proven methods.”<sup>246</sup>

An attempt at rapid shift in incentives and priorities produced an environment where ASIO officers hastily leapt at new goals rather than systematically building lawful and cooperative bridges to accomplish their mission. As Cain observed, “illegal actions of the ASIO agents and AFP officers, as in the [terrorist suspect Izhar] ul-Haque case,

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<sup>243</sup> Australian Security Intelligence Organisation, “Parliamentary Submission: Parliamentary Joint Committee on Intelligence and Security inquiry into potential reforms of National Security Legislation,” September 19, 2012 (accessed December 7, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2012/Sept-2012-submission-to-PJCIS.html>; Cain, *Terrorism and Intelligence in Australia*, 220.

<sup>244</sup> Cain, *Terrorism and Intelligence in Australia*, 186.

<sup>245</sup> Jones and Ungerer, “Australia,” 172; Carl Ungerer, “Australia’s Policy Responses to Terrorism in Southeast Asia,” *Global Change, Peace & Security* (18:3), 2006 (accessed November 29, 2012) <http://dx.doi.org/10.1080/14781150600960248>, 194.

<sup>246</sup> Australian Security Intelligence Organisation, “Publications—Director-General’s address to the AFP Executive Retreat,” October 25, 2005 (accessed November 27, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2005/DG-address-to-the-AFP-Executive-Retreat.html>. Concepts also from: Frank Cain, *The Australian Security Intelligence Organization: An Unofficial History* (England: Frank Cass and Co. Ltd., 1994); Cain, *Terrorism and Intelligence in Australia*, 233; Ungerer, “Australia’s Policy Responses.”

were understandable...These intelligence officers were young men and women keen to build some sort of career in the intelligence agencies and the AFP.”<sup>247</sup> Shifts or blending of cultural incentives can also cause mission confusion. In the 2011–2012 report terrorism was ASIO’s “most immediate” concern.<sup>248</sup> In the same report, however, ASIO counted espionage as “an enduring and first-order threat to Australia’s security.”<sup>249</sup> While ASIO may well be correct to diversify its portfolio, the Organisation’s reactive and fluctuating message presents an array of “primary” incentives.

### 3. ASIO’s Allocation of Resources

ASIO’s turn toward counterterrorism was evident in its resource allocation. In a decade, ASIO’s budget grew 471 percent, from AUD \$69 million (equivalent USD \$72.5 million) to AUD \$400 million (equivalent USD \$420 million) in 2001.<sup>250</sup> It may be naturally presumed that ASIO earmarked the funds for counterterrorism, but its internal funding allocations are classified. ASIO’s activities, restructuring, and statements, however, help confirm the presumption that the service thrust the preponderance of its resources at counterterrorism. Specifically, some, such as Chalk, estimated that since the turn of the century ASIO has dedicated approximately 80 percent of its resources to counterterrorism work.<sup>251</sup>

Increased funding allowed ASIO to alter its organizational structure to emphasize counterterrorism. Still, ASIO was slow to adjust. In 2005 the Australian government commissioned the Allan Taylor Review, which concluded that ASIO was not wholly

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<sup>247</sup> Cain, *Terrorism and Intelligence in Australia*, 277.

<sup>248</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 2.

<sup>249</sup> *Ibid.*, 5.

<sup>250</sup> Australian Security Intelligence Organisation, “Publications—Parliamentary Joint Committee on Intelligence and Security Review of Administration and Expenditure No. 7: 2007–2008,” (accessed November 28, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2009.html>; Australian Security Intelligence Organisation “Publications—Parliamentary Joint Committee on Intelligence and Security: Review of Administration and Expenditure No. 8: 2008–09, ASIO Submission,” (accessed November 28, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2010.html>; Tom Hyland, “Terror Fight Costs 30 Billion,” *Sydney Morning Herald*, September 11, 2011 (accessed November 29, 2012) <http://www.smh.com.au/national/terror-fight-costs-30-billion-20110910-1k3ez.html>; Grono, “Australia’s Response to Terrorism”; Jones and Ungerer, “Australia,” 176.

<sup>251</sup> Chalk, “Australia,” 15–16; Grono, “Australia’s Response to Terrorism.”



prepared to meet threats such as international terrorism, and recommended further shifts in ASIO's resources.<sup>252</sup> It was not until 2006 that ASIO created a Collection Division focused on terrorism, prioritized staffing and legal resources for the division, and separately created two units dedicated to "utilising intelligence in legal proceedings."<sup>253</sup> These new units, the Executive and Legal Division and the Counter-Terrorism Litigation Advice Branch, met the increasing need for support to criminal prosecutions. ASIO further isolated counterterrorism from other topics when it moved espionage and "foreign interference" into a new Counter-Espionage and Interference Division. The Organisation also helped establish a national-level, joint, counterterrorism coordination unit within ASIO.<sup>254</sup>

A turn toward terrorism gave the Organisation a chance to recover from resource decline following the end of the Cold War. In 1996, ASIO had to cut 50 of its 520 positions, by 1998 it was reduced to historically low staffing, and by 2002 resignations had jumped to a high 11.5 percent.<sup>255</sup> Counterterrorism offered the service opportunity to reverse this trend. In 2005 ASIO highlighted significant terror attacks, such as 7/7, as cause for strengthening its numbers and its focus on counterterrorism.<sup>256</sup> ASIO's website now touts its "lower than average attrition figures."<sup>257</sup>

As of 2012, ASIO reported that its "resources [were] directed primarily to countering terrorism but counter-espionage, foreign interference and counter-proliferation [were] also priorities."<sup>258</sup> ASIO's focus on counterterrorism operations, however, may

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<sup>252</sup> Australian Security Intelligence Organisation, "Publications—Director-General's address to the AFP Executive Retreat"; Grono, "Australia's Response to Terrorism."

<sup>253</sup> Ibid., Chalk, "Australia," 12.

<sup>254</sup> Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security," 23–24, 40.

<sup>255</sup> Cain, *Terrorism and Intelligence in Australia*, 217–218; Jones and Ungerer, "Australia," 171–172.

<sup>256</sup> Australian Security Intelligence Organisation, "Publications—Director-General's address to the AFP Executive Retreat."

<sup>257</sup> Australian Security Intelligence Organisation, "Careers—Our Culture," (accessed November 27, 2012) <http://www.asio.gov.au/Careers/Our-Culture/Working-Environment.html>; Australian Security Intelligence Organisation, "Information Briefs—ASIO Overview," 3.

<sup>258</sup> Australian Security Intelligence Organisation, "Information Briefs—ASIO Overview," 3; Cain, *Terrorism and Intelligence in Australia*, 217–8.

have a detrimental impact on other priorities. For instance, a 2011 review by the Australian Human Rights Commission found that delays in completing personal security assessments left many asylum seekers and immigrants detained and in legal limbo indefinitely. The Commission also noted that ASIO failed to allocate adequate resources to immigration assessments.<sup>259</sup>

#### **4. ASIO's Counterterrorism-centered Hiring and Training**

ASIO was slow to recruit the diverse cadre needed for counterterrorism. It was not until after the 2005 Taylor Review that the Organisation appears to have fully prioritized recruitment for counterterrorism, seeking to nearly double its force by adding 900 officers. ASIO used diverse media and events to reach non-English speakers and minorities.<sup>260</sup> Despite concerted effort, ASIO had limited success recruiting foreign language speaking officers, and as of June 2012 only five percent of ASIO's workforce was of non-English speaking, minority, heritage.<sup>261</sup> In 2005, ASIO contracted outside expertise to help "ensure [it] did not disadvantage applicants from non-English speaking backgrounds."<sup>262</sup> In contrast to these initiatives, however, ASIO admitted that while hiring people with Middle Eastern and Southeast Asian backgrounds was important, it was not ASIO's first priority; the service prioritized investigative and analytical skills over ethnic diversification.<sup>263</sup> A lack of minority officers of the demographic targeted by

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<sup>259</sup> Australian Human Rights Commission, "Independent Review of the Intelligence Community—Australian Human Rights Commission Submission," April 2011 (accessed November 28, 2012) [http://humanrights.gov.au/legal/submissions/2011/20110431\\_intelligence.html](http://humanrights.gov.au/legal/submissions/2011/20110431_intelligence.html).

<sup>260</sup> Australian Security Intelligence Organisation, "Information Briefs—The Evolution of Australia's Intelligence Services," (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Information-Briefs.html>, 6–7; Australian Security Intelligence Organisation, "Publications—Director-General's address to the AFP Executive Retreat." ASIO used radio and print media, university career fairs, and its website.

<sup>261</sup> Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," 131 (Part 7-Appendix E-Table 3); Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security," 26. ASIO did not highlight specific minorities other than those of Aboriginal heritage (.3 percent). 94 employees were of non-English speaking background.

<sup>262</sup> Australian Security Intelligence Organisation, "Parliamentary Joint Committee on Intelligence and Security Review of Administration and Expenditure No. 4—Recruitment and Training Submission," February 7, 2006 (accessed November 28, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2006.html>, 7.

<sup>263</sup> The Age, "Why it's 'Really Cool' to be a Spy," October 28, 2002 (accessed November 28, 2012) <http://www.theage.com.au/articles/2002/10/27/1035683305213.html>.

ASIO's counterterrorism units may have forced the service to rely on means other than HUMINT. According to media reporting, ASIO's most notable success since 9/11—a 2004–2006 operation known as Pendennis in which ASIO and the AFP tracked and arrested 16 suspected terrorists—began with a citizen tip-off and then extensively used technical intercepts to build a case.<sup>264</sup>

If it could not hire a diverse workforce, the Organisation could still train its officers to work with diverse communities. By 2007, training for select ASIO officers included full time language instruction with in-country immersion.<sup>265</sup> The Organisation also saw a need for its officers to become more culturally sensitive to their targets, noting that “[w]hile relevant language skills can add to the repertoire...of greater importance is the need for Intelligence Officers involved in collection work to be culturally aware and sensitive.”<sup>266</sup> After 9/11 ASIO added courses on Islam and international terrorism, and indoctrination training for counterterrorism specialists included specialized training exercises in Australia and Thailand.<sup>267</sup> ASIO's attention was not limited to operations. Recognizing the increased exposure to the judicial system related to counterterrorism, in 2006–2007 ASIO developed courses to train its officers on how their information may be used in court proceedings.<sup>268</sup> ASIO officers, however, remained unprepared for the courtroom. They lacked the detailed legal knowledge, such as handling of evidence and admissibility of suspects' statements, necessary for successful prosecutions.<sup>269</sup>

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<sup>264</sup> Karen Kissane, “Tip-off Led to Intense 16-month Investigation,” *The Age*, September 17, 2008 (accessed November 29, 2012) <http://www.theage.com.au/national/tipoff-led-to-intense-16month-investigation-20080916-4hxp.html#ixzz2DdWGrYFS>; John Miller, “National Security: Let our Security Services Do Their Job,” *News Weekly*, August 2, 2008 (accessed November 29, 2012) <http://newsweekly.com.au/article.php?id=3308>; *Ibid.*

<sup>265</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” 50.

<sup>266</sup> *Ibid.*, 25.

<sup>267</sup> Australian Security Intelligence Organisation, “Parliamentary Joint Committee on Intelligence and Security Review of Administration and Expenditure No. 4—Recruitment and Training Submission,” 12; *The Age*, “Why it's ‘Really Cool’ to be a Spy.”

<sup>268</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” 25.

<sup>269</sup> Cain, *Terrorism and Intelligence in Australia*, 277. As a partial indicator of the impact, terrorism-related prosecution rates collapsed.

## 5. ASIO's Attention to Transnational Threats

Throughout its modern history, Australia has been outwardly focused.<sup>270</sup> ASIO is no different, and its website notes that “security is not limited geographically”<sup>271</sup> and that threats to Australia “may be directed by, influenced or otherwise linked to factors outside Australia...”<sup>272</sup> ASIO has consistently recognized and emphasized this reality. In its most recent report to Parliament, ASIO highlighted that “[i]ndividuals who seek to engage in violence in Australia or attempt to travel overseas to train and fight are priorities for ASIO...”<sup>273</sup> The report also stressed the importance of maintaining an eye on distant threats such as the Boko Haram terrorist group in Nigeria. As outlined further below, ASIO translates this focus into robust international liaison relationships.<sup>274</sup>

### C. THE INTELLIGENCE FUNCTION AND CULTURE OF THE SERVICE

ASIO presents itself as an intelligence service dedicated to clandestine collection of intelligence that helps prevent terrorist attacks. In message, recruitment, and training, the Organisation holds true to this line. In action, however, and although it is formally prevented from policing, ASIO has blended police-like activities with intelligence collection. The service parlays “intelligence investigation” of committed and planned offenses into a methodology that promotes “security” as a unitary agenda, combining law enforcement and intelligence practices. Moreover, ASIO’s counterterrorism operations and intimate involvement with terrorism prosecutions has begun to erase the line between policing and intelligence; its repertoire and culture now include tools and incentives traditionally attached to law enforcement organizations.

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<sup>270</sup> Jones and Ungerer, “Australia,” 168.

<sup>271</sup> Australian Security Intelligence Organisation, “Information Briefs—What Security Means to ASIO,” (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Information-Briefs.html>, 1.

<sup>272</sup> Michael Wesley, “Between Probity and Proficiency: Challenge and Change within the Australian Intelligence Community,” *Canadian Security Intelligence Service*, April 2006 (accessed November 29, 2012) <http://www.csis-scrs.gc.ca/pblctns/cmmntr/cm88-eng.asp>; Australian Security Intelligence Organisation, “Information Briefs—The Concept of Security Intelligence,” 1; Chalk, “Australia,” 16. The ASIO Act of 1979 clearly notes that the Organisation is responsible for threats—domestic and foreign.

<sup>273</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 3.

<sup>274</sup> *Ibid.*, 2.

## 1. ASIO's Genesis and History

Designed after the British service, ASIO began as a security service with intelligence duties (as a purpose apart from defense or policing), but history would find it blending law enforcement-like investigations with forward-looking intelligence. As intelligence scholar Nicholas Grono noted, ASIO was intended as part of a system that isolated it from policing: “[t]he separation between intelligence and law enforcement in Australia is a reflection of the Australian intelligence community’s British heritage... ASIO was modeled on MI5 and the British practice of separating intelligence and law enforcement functions.”<sup>275</sup> To this end, ASIO’s charter prohibited it from policing.<sup>276</sup> ASIO’s primary objectives, however, put it in an awkward position—countering subversive groups and foreign espionage was traditionally a police matter.<sup>277</sup> As Cain noted: “[r]adical political groups have always provided the targets for intelligence collection and surveillance...but such operations were conducted by the police forces of the several Australian states.”<sup>278</sup> Intensifying the blurring of roles and cultures, terrorism in the early 2000s brought an extension of ASIO’s powers that were more police-like than intelligence oriented (such as detention, search, and questioning). The modern Organisation has noted its attention to law enforcement-style investigations: “ASIO’s work necessarily has a strong focus on ‘investigation’ because it has to resolve security intelligence questions such as the relevance to security of particular activities, the threat posed by the activities of persons and groups of security concern, and harm done to national security interests through those activities.”<sup>279</sup> Cain highlighted the exacerbated

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<sup>275</sup> Grono explained “the rationale for this separation is that it enables stronger powers to be given to an intelligence agency—which investigates for intelligence purposes only and has no powers of arrest—than would be acceptable for a law enforcement agency” (Grono, “Australia’s Response to Terrorism”).

<sup>276</sup> Hocking, *Terror Laws*, 27.

<sup>277</sup> Jones and Ungerer, “Australia,” 165.

<sup>278</sup> Cain, *The Australian Security Intelligence Organization*, 1; Eye Spy Intelligence Magazine, “Australia Security Services and Selected Government Offices”; Concepts from Jones and Ungerer, “Australia,” 165.

<sup>279</sup> Australian Security Intelligence Organisation, “Information Briefs—ASIO Overview,” 3.

shift in culture when he noted, “a battery of anti-terrorist legislation and the conversion of ASIO into a form of secret police, as the means for thwarting a possible terrorist attack.”<sup>280</sup>

## **2. ASIO’s Intelligence-centered Hiring and Training**

ASIO attempted to hire officers for intelligence-oriented positions, prioritizing analytical skills. ASIO, however, found it difficult to attract the right personnel.<sup>281</sup> Due in part to a large number of new positions to fill, the program fell short and, as of 2007, ASIO was unable to attract enough qualified analysts. To reduce the hiring gap, the Organisation turned toward “targeted advertising” and financial incentives to attract new recruits, but recruitment still lagged.<sup>282</sup>

Where its recruitment efforts missed, the Organisation’s training was on the mark. ASIO maintained a specialized training program for its intelligence collection officers and took a long view of the training process, acknowledging, “it takes several years to recruit and train staff to be effective in the role of intelligence collection.”<sup>283</sup> ASIO’s program began with a one-year “traineeship” that included formal instruction and rotations to Collection Offices. Recognizing the difficulty of outsourcing specialized intelligence training, the Organisation then relied upon on-the-job and advanced training for its intelligence collection officers.<sup>284</sup>

## **3. ASIO’s Emphasis on HUMINT**

ASIO’s relationship with HUMINT is complicated. The Organisation’s statements and officer training appear to prioritize HUMINT collection. According to a media interview with a 2002 ASIO trainee, ASIO’s collection officer training included

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<sup>280</sup> Cain, *Terrorism and Intelligence in Australia*, 277.

<sup>281</sup> Ibid., 221. Under DG Richardson, ASIO tried to hire well-educated officers out of university, but rather than use a focused campaign to seek out those who sought analytical intelligence work, ASIO sought to capitalize on patriotism.

<sup>282</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” 45.

<sup>283</sup> Ibid., 25.

<sup>284</sup> Ibid., 25, 51.

human source operations.<sup>285</sup> Emphasis on HUMINT was similarly shown in ASIO's 2011–2012 Annual Report, which mentioned the ability of technical collection to “compliment” HUMINT reporting.<sup>286</sup> Furthermore, in his assessment of Australian intelligence, Chalk asserted that ASIO acquired much of its covert information from human sources.<sup>287</sup>

ASIO's HUMINT endeavors, however, do not necessarily rely on long-term penetrations of terrorist networks. Rather, ASIO has relied on informants drawn from post-arrest plea bargains, detainee interrogations, local police information, and community-based networks. ASIO ran an extensive civic outreach program, known as the Community Contact Program, and participated in the National Security (phone) Hotline, as a means to enhance its HUMINT reporting.<sup>288</sup> Hence, while ASIO used human sources, and productively capitalized on all HUMINT means available to it, this study's review of open-source materials offered few examples of counterterrorism successes derived from traditional agent penetrations of terrorist cells.<sup>289</sup> This matter is not without consequence. As noted in previous chapters, and by the post-9/11 discourse, there is a significant difference between long-term agent penetrations of terrorist networks and law enforcement-based informant programs. As argued by security authors such as Agnes

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<sup>285</sup> The Age, “Why it's ‘Really Cool’ to be a Spy.”

<sup>286</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 34.

<sup>287</sup> Chalk, “Australia,” 19.

<sup>288</sup> Ibid., 20; Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 34.

<sup>289</sup> Kissane, “Tip-off”; Miller, “National Security.” Admittedly, a good intelligence service would protect its human sources and hide related operations from the press. Still, most often (as was the case with MI5), there are at least a few apparent agent-based operations that make into the public eye. ASIO's most public operations each originated with alternative means: multiple arrests in 2007's Operation Pendennis began as a citizen tip-off; and the arrest of Indian doctor Mohamed Haneef, suspected of involvement in the 2007 Glasgow Airport bombing, began with a found mobile phone SIM-card.

Gereben Schaefer, Posner, Crumpton, and alluded to by the 9/11 Commission, the latter may lead to short-term assets that support reactive and near-term actions rather than predictive, long-term, operations.<sup>290</sup>

Furthermore, it is of note that ASIO relies heavily on technical intercepts to build its case and collect evidence, as would a police service.<sup>291</sup> For instance, in 2011–2012 ASIO sought enhanced authority to intercept phone and e-mail traffic, justified by DG Irvine as “critically important” to ASIO.<sup>292</sup> While the request made operational sense, it highlighted the Organisation’s heavy reliance on technical means; a reliance that appears—based on unclassified reporting—to not simply “complement,” but perhaps equal, reliance on HUMINT.

#### **4. ASIO’s Intelligence-led Incentives**

ASIO recognizes the need for an intelligence-led culture. DG Irvine outlined his thinking in 2012:

First and foremost, preventative action requires intelligence. In this sense, the counterterrorism function, with its focus on prediction and prevention of threat differs qualitatively from much of the work conducted by law

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<sup>290</sup>*The 9/11 Commission*, 72; Crumpton, “Intelligence and Homeland Defense,” in *Transforming U.S. Intelligence*; Gereben Schaefer, “The History of Domestic Intelligence in the United States,” 24; Posner, *Remaking Domestic Intelligence*. Per Agnes Gereben Schaefer, intelligence involves “monitoring activities that did not include an overt act or violation of a specific statute but could have become a violation of law. . .” To reiterate, law enforcement services, per the 9/11 Commission, do not possess the best culture for preventing terrorism. Related, in America, intelligence reforms were frustrated by the traditional law enforcement culture of the U.S. domestic security apparatus. By the mid-2000s pundits noted that, although another attack on the scale of 9/11 had not succeeded, the FBI had failed to make the necessary reforms to transition from a case-based, reactive, law enforcement service to one able to collect and analyze predictive intelligence. In reply, the FBI claimed it made strides in the right direction and that law enforcement activities were commensurate with intelligence collection, but admitted reforms were incomplete (U.S. Senate Committee on the Judiciary, “Oversight of the Federal Bureau of Investigation”); Mark Randol, “The Department of Homeland Security Intelligence Enterprise: Operational Overview and Oversight Challenges for Congress,” *Congressional Research Service*, (March 19, 2010).

<sup>291</sup> Kissane, “Tip-off.”

<sup>292</sup> Di Martin, “ASIO Head Defends Changes to National Security Law,” *ABC*, October 19, 2012 (accessed November 29, 2012) <http://www.abc.net.au/am/content/2012/s3613972.htm>. ASIO specifically sought legal amendment to allow it the ability to technically target persons of interest by-name rather than by-phone number or IP address.



enforcement authorities with their emphasis on the investigation and collection of evidence in respect of crimes already committed.<sup>293</sup>

On paper, the service maintains these cultural values and incentives. Additionally, its senior ranks are pulled from the intelligence corps, in particular its intelligence analysts. As of 2009, ASIO promoted officers with backgrounds in security studies, international relations, and foreign language fluency.<sup>294</sup> Additionally, at least two of ASIO's 12 DG's have had a significant intelligence background: DG Irvine is the former head of ASIS, and former ASIO DG Harvey Barnett (1981–1985), was an ASIS officer.<sup>295</sup>

ASIO's turn toward counterterrorism, however, has drawn the Organisation increasingly toward law enforcement incentives, such as preparation of evidence and successful prosecution, and as aptly noted by Jones and Ungerer, "...new ASIO legislation moved the organization into the arena of preemptive policing."<sup>296</sup> Prior to 2003, the Australian criminal code blandly referred to "politically motivated violence" as a means to avoid legitimizing terrorism's proponents. After new legislation was introduced in 2003, however, terrorism became a codified criminal offense and ASIO's boss, the Attorney General, now determines whether or not a group should be proscribed under terrorism laws. As the counterterrorism arm of the Attorney General, ASIO became part-and-parcel of the justice apparatus. ASIO's internal incentives followed, shifting toward successful prosecutions wherein related operations, such as surveillance, require warrants based on evidence of a crime.<sup>297</sup>

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<sup>293</sup> Australian Security Intelligence Organisation, "Publications—Director-General Speech: Address to the Security in Government Conference 2012—Australia's Current Security and Intelligence Operating Environment," September 4, 2012 (accessed December 7, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2012/4-September-2012-SIG2012.html>.

<sup>294</sup> Chalk, "Australia," 23.

<sup>295</sup> Australian Security Intelligence Organisation, "Director General of Security," (accessed November 26, 2012) <http://www.asio.gov.au/About-ASIO/Organisational-Structure/Director-General-of-Security.html>; Hocking, *Terror Laws*, 115.

<sup>296</sup> Jones and Ungerer, "Australia," 177.

<sup>297</sup> Security Legislation Amendment (Terrorism) Bill 2002 in *Ibid.*, 176. Warrants may be issued based on strong suspicion of a crime, which also requires some evidence. Also, scholar Kent Roach noted the complication: "[t]his approach envisaged the domestic security intelligence agency taking a lead role in terrorism investigations and differs from the approach taken in the United States, the United Kingdom, and Canada, where the police would take that lead." Kent Roach, *The 9/11 Effect: Comparative Counter-Terrorism* (New York: Cambridge University Press, 2011), 329.

While ASIO considers its counterterrorism work as the “investigation” of threats that can include “referrals to law enforcement partners,”<sup>298</sup> often the service became a *de facto* police force, conducting law enforcement-driven investigations, handing over the reins in the final moments.<sup>299</sup> As such, incentives shifted toward a law enforcement culture and reactive operations. In a 2002 interview, an ASIO trainee inadvertently highlighted the problem—speaking to the legal threshold required to meet civil liberty safeguards, she noted, “[y]ou have to almost prove your case (against someone) before you can do it.”<sup>300</sup> Notably, as part of its evaluation of the service’s performance, and that of its officers, ASIO now formally assesses “support to prosecutions.”<sup>301</sup>

Shifting incentives toward supporting judicial process has been problematic for the Organisation and the Australian courts. For example, in the 2006 trial of Faheem Lodhi on charges of plotting to conduct bombing attacks in Sydney, the trial judge noted that ASIO, “for all its skill in intelligence gathering, is perhaps not well equipped to gather evidence for a criminal trial; and its individual agents are not well tutored in the intricacies of the criminal law relating to procedure and evidence.”<sup>302</sup>

These weaknesses were evident in the trials of terrorism suspects Izhar ul-Haque and Mohammed Haneef. In 2004, the case against ul-Haque fell apart when the court determined that ASIO’s loose interview practices and mishandling of a search warrant made ul-Haque’s prior admissions to ASIO officers inadmissible. Subsequently, in 2007, perfunctory ASIO information indicating a potential tie to the 2007 Glasgow Airport, Scotland, bombing led to the 12-day detention of Indian doctor Mohamed Haneef, but confusion within police and border control elements over how to handle ASIO’s

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<sup>298</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 27.

<sup>299</sup> Roach, *The 9/11 Effect*, 358–359. On repeated occasions between 2002 and 2012, ASIO sought expanded powers of detention, questioning, and telecommunications intercept as a means to enhance its intelligence collection. In 2002, 2005, and 2011–2012, in particular, ASIO sought enhanced powers of technical collection, questioning of detainees, and legal protection for its officers.

<sup>300</sup> The Age, “Why it’s ‘Really Cool’ to be a Spy.”

<sup>301</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 8–9.

<sup>302</sup> Roach, *The 9/11 Effect*, 351. The problem, Cain noted, was that “[t]he normal ASIO agent, unschooled in the law, was unable to discriminate between criminal offences” (Cain, *The Australian Security Intelligence Organization*, 270).

intelligence led to Haneef's release. An inquiry into handling of the matter revealed a conflict of methods between ASIO and law enforcement agencies. As legal scholar Kent Roach noted, "[t]he changing relationship between intelligence and evidence means that in many cases, intelligence investigations will overlap with criminal investigations. Police forces will have to deal with the ambiguities of intelligence, and intelligence agencies will have to deal with the evidential demands of criminal law."<sup>303</sup>

#### **D. THE SERVICE'S ABILITY TO ACQUIRE AND MAINTAIN PUBLIC TRUST**

ASIO's reputation is a victim of history. During the 1950s-1980s, extreme secrecy, allegations that it withheld information from elected officials, and aggressive use of its loosely defined mandate—drawing accusations that it occasionally violated its authorities—soiled ASIO's reputation. More recently, public acceptance of civil liberty curtailments in pursuit of safety from terrorism helped abate pre-9/11 public suspicion; as ASIO's mission turned toward counterterrorism its actions were more widely accepted. That said, ASIO remained isolated from its constituency and, in a business where diversity aids operational success, it failed to recruit minorities and foreign language specialists in significant numbers.

##### **1. ASIO's Openness Policies and Public Outreach Efforts**

ASIO has a long history of extreme secrecy.<sup>304</sup> Per Cain, "[s]ecrecy was to be ASIO's hallmark of operation."<sup>305</sup> In the early 1900s, ASIO's predecessor organizations operated under confidentiality policies so strict that opposition party leaders were not informed of their existence. For example, in 1947 the head of Australia's Department of External Affairs, John Burton, was surprised to find that a small cabal known as the "Gnomes of Melbourne" was almost solely responsible for generating Australian

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<sup>303</sup> Roach, *The 9/11 Effect*, 352–353.

<sup>304</sup> Cain, *Terrorism and Intelligence in Australia*, 1.

<sup>305</sup> Cain, *The Australian Security and Intelligence Organisation*, 164. Cain went on to note: "[i]n what would now be considered illegal, ASIO conducted wiretapping of telephones, the unlawful interference with mails, the making and installation of listening bugs and the secret photographing of political activists. ASIO's secret funds were expended on hiring people to infiltrate trade unions and left-wing groups..."

intelligence policy. One member of the group, the Director of Military Intelligence, went so far as to ask Burton to swear an oath to keep secret from his elected superiors information he received from the group.<sup>306</sup>

In addition to a culture of self-imposed censorship, through the 1990s ASIO had limited engagement with the press. When ASIO engaged the media, it may have done so with impropriety. For example, in the 1970s the Organisation's, now disbanded, Special Project Section sought to build press relationships as means to acquire and manipulate information. The 1977 RCIS called these relationships "improper in the extreme."<sup>307</sup> In partial response to the criticisms, in 1985 ASIO created the position of Media Liaison Officer as a mechanism to normalize media relations, and from the 1990s implemented initiatives—such as a website ([www.ASIO.gov.au](http://www.ASIO.gov.au))—to acquire public support for its mission and activities.<sup>308</sup>

ASIO's newfound openness extended into the 2000s. In commemoration of its 60th Anniversary in 2009, ASIO commissioned a historian from the Australian National University to write "an independent and scholarly history of ASIO" during the period of 1949–1989. Additionally, in the same year ASIO began releasing records through 1979; the Australian Archives Act of 1983 made it possible for ASIO to release documents more than 30 years old.<sup>309</sup> Although these efforts signified enhanced openness, stopping information flow at 1989 hides the Organisation's present work (in contrast to MI5's inclusion of events through 2009). Ironically, and although understandable given security

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<sup>306</sup> Hocking, *Terror Laws*, 18 and 21.

<sup>307</sup> Jenny Hocking, *Lionel Murphy: A Political Biography* (New York: Cambridge University Press, 2000), 287.

<sup>308</sup> Ibid., Australian Security Intelligence Organisation, "Publications—Report to Parliament 2003–04," November 5, 2004 (accessed November 27, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2004/ASIO-Report-to-Parliament-2003-to-04.html>; Eye Spy Intelligence Magazine, "Australia Security Services and Selected Government Offices."

<sup>309</sup> Eye Spy Intelligence Magazine, "Australia Security Services and Selected Government Offices."

needs, in limiting the release ASIO may divert publicity for its more widely accepted counterterrorism work to its more controversial counter-subversion efforts of the 1950s-1970s.<sup>310</sup>

The Organisation's openness includes its senior officials.<sup>311</sup> ASIO now has two publicly identified figures: DG Irvine and the Deputy DG of Corporate Strategy, Kerri Hartland.<sup>312</sup> Both give speeches and, in a marked shift from years past, sit for media interviews. In 2012, Irvine outlined ASIO's policy on openness: "ASIO seeks to make available as much information as possible about the work of the Organisation within national security constraints...I am committed to continuing this focus on increased public engagement."<sup>313</sup> Irvine kept true to his word. In the Fall of 2012, when the media questioned ASIO's request for additional technical surveillance powers, Irvine went before the press to explain ASIO's position.<sup>314</sup>

## **2. ASIO's Hiring Practices**

Despite efforts to increase minority hiring, ASIO has been a service predominantly comprised of white, Christian, men and women with limited language skills. The Organisation's efforts to increase minority hiring, however, are hampered by Australian demographics. As of the 2006 census, half of the nation was female, 92 percent were white, 1.7 percent claimed to be Muslim, and only 21.5 percent of the population claimed to speak a language other than English.<sup>315</sup> Hence, ASIO is reflective of its community: of its 1,812 staff in June 2012, 44 percent were women and five

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<sup>310</sup> Australian Security Intelligence Organisation, "Publications—History" (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Histor-of-ASIO.html>.

<sup>311</sup> Cain, *Terrorism and Intelligence in Australia*, 221. Former DG Richardson was also known for his outreach efforts, giving speeches and attending functions to improve ASIO's reputation and enhance hiring.

<sup>312</sup> Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," xv.

<sup>313</sup> *Ibid.*, x.

<sup>314</sup> Andrew Lynch, "Strong Support for Rights," *Australian Policy Online*, September 25, 2006 (accessed November 29, 2012) <http://apo.org.au/commentary/strong-support-rights>, 1; Martin, "ASIO Head Defends Changes to National Security Law."

<sup>315</sup> Central Intelligence Agency World Factbook, "Australia." Seven percent were Asian and one percent were "aboriginal and other."

percent were of “non-English speaking background.”<sup>316</sup> Despite this statistical disadvantage, ASIO tried to hire from minority communities. As evidence, its 2005–2006 hiring advertisements prominently showed minorities (e.g., an Asian female).<sup>317</sup> ASIO’s public face—the DG—however, has not necessarily enhanced an image of minority equality. Despite traditionally filling the position from outside ASIO to avoid perceptions of nepotism, all of its 12 directors have been white, upper-class, males. This gender bias may extend to ASIO’s senior ranks, which as of 2011 was filled by 33 percent women (compared to 44 percent across all grades).<sup>318</sup>

### **3. ASIO’s Support to Oversight and Control**

ASIO’s charter placed it under civilian control as a measure to secure, per then Attorney General Herbert V. Evatt, “public confidence in the reasonable protection of civil rights and liberty.”<sup>319</sup> Despite its origins, however, habitual secrecy and manipulation of legislation allowed ASIO to define the extent of government control over its activities. For example, drafted with heavy ASIO input, the ASIO Act of 1956 was intended to make the Organisation less vulnerable to government power shifts. Fearing change in the ruling party would mean the end of ASIO, DG Charles Spry (1950–1970) helped tailor the ASIO Act of 1956, which moved ASIO from a contractual charter to a statutory basis. Spry’s 1956 Act also provided him power to conduct operations largely free of oversight.<sup>320</sup>

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<sup>316</sup> Data from Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 131 (Part 7-Appendix E-Table 3). 94 employees were of “non-English speaking background.” ASIO classified its minorities as of a non-English background or Aboriginal. ASIO did not release information regarding religious preferences of its officers.

<sup>317</sup> Australian Security Intelligence Organisation, “Parliamentary Joint Committee on Intelligence and Security Review of Administration and Expenditure No. 4—Recruitment and Training Submission,” 19.

<sup>318</sup> Data from Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 130 (Part 7-Appendix E-Table 2). As one measure to prevent the perception of nepotism and enhance the Organisation’s cooperation with outside elements, outsiders have traditionally filled the position of DG. Only once, during 1970–1975 with DG Peter Barbour, was the DG appointed from within ASIO (Chalk, “Australia,” 24).

<sup>319</sup> Hocking, *Terror Laws*, 24.

<sup>320</sup> Cain, *The Australian Security Intelligence Organization*, 252–253; Cain, *Terrorism and Intelligence in Australia*, 163.

ASIO's independence was emboldened through the 1970s.<sup>321</sup> Although the Attorney General was formally responsible for the Organisation's operations, the ASIO Act of 1979 placed ASIO operations under the control of the DG, intending to ensure communication across partisan aisles. The 1979 Act, however, also reduced the Attorney General's ability to override the DG's decisions.<sup>322</sup> As highlighted by Hocking, "ASIO emerged in the 1980s not only intact, but with greatly expanded powers and a diminution of ministerial accountability in key areas."<sup>323</sup> ASIO kept relatively hidden from government oversight until the 1986 Amendment to the ASIO Act of 1979 enhanced the ability of the elected government to oversee operations. The Amendment moved approval authority for ASIO's operating guidelines up from the DG to the Attorney General and created the PJCIS. Shortly thereafter, the government created the independent office of the Inspector General of Intelligence and Security (IGIS) to oversee intelligence operations. By many accounts, ASIO respected IGIS' authority.<sup>324</sup>

ASIO of 2012 was a different creature than before 1986.<sup>325</sup> A service that once hid from oversight now touted the importance of oversight mechanisms. In a February 2012 speech, DG Irvine alluded to ASIO's support: "...I continue to believe that the majority of Australians expect their governments to take all necessary action to protect the community and...strike an appropriate balance between the civil rights of the community and those of the individual—and put in place an effective accountability

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<sup>321</sup> Australian Security Intelligence Organisation, "Information Briefs—ASIO's Legislative Framework," (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Information-Briefs.html>, 2; Jones and Ungerer, "Australia," 168.

<sup>322</sup> Australian Security Intelligence Organisation, "Information Briefs—ASIO Overview," 2; Cain, *The Australian Security Intelligence Organization*, 258 and 261; Jones and Ungerer, "Australia," 170; Hocking, *Terror Laws*, 151, 154–155. It also framed ASIO's authority in a manner that effectively ended operational approval cycles at the the DG. For example, the ASIO Act of 1979 tied ASIO's activities such as searching premises, phone tapping, and mail opening to an external oversight authority, the Attorney General, as warrant approver. ASIO's influence over warrant approvals, however, was near absolute.

<sup>323</sup> Hocking, *Terror Laws*, 39.

<sup>324</sup> Cain, *The Australian Security Intelligence Organization*, 271–272.

<sup>325</sup> Chalk, "Australia," 26.

regime.”<sup>326</sup> ASIO now has an in-house legal team and responds to IGIS inquiries. Additionally, once every three months ASIO section chiefs submit a performance review to the DG. These reports, along with a semiannual assessment and a year-end report to Parliament, serve as a means to assess ASIO’s adherence to guidelines. Also, as required by Section 21 of the ASIO Act 1979, the DG regularly briefs the opposition party Leader on security matters. Furthermore, ASIO has introduced mechanisms to train its new officers on accountability and control.<sup>327</sup>

#### **4. ASIO’s Actions that Violated Mandate and Impacted Public Trust**

According to Chalk, “[w]hile by no means blemish free, [ASIO’s] overall track record has been largely devoid of major controversies and scandals...”<sup>328</sup> Some critics were not so kind. Prominent Australian Barrister Ian Barker Q.C. once commented that anyone linked to a trial involving the Organisation would know “that its agents habitually act outside their powers and routinely abuse them, always in secret.”<sup>329</sup> ASIO’s “blemishes” have had a negative impact on public trust. That impact, however, may be bifurcated into the pre- and post-counterterrorism eras. Previously, ASIO was labeled a politicized force that viewed its mandate with a sweeping eye and defined lawful dissent as subversive. More recently, ASIO’s counterterrorism mission has garnered less cynicism. Infrequent missteps and efforts to expand its powers, however, have also raised concern over the Organisation’s effectiveness and the lengths it is willing to go to support its definition of security.

Like many Western services, ASIO spent its post-WWII years eyeing Communist subversives, and until 1979 when its mandate was better defined, ASIO’s interpretation

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<sup>326</sup> Australian Security Intelligence Organisation, “Publications—Director-General Speech: Address to the Institute of Public Administration Australia—Accountability, Rights and National Security,” February 28, 2012 (accessed December 7, 2012) <http://www.asio.gov.au/Publications/Speeches-and-Statements/2012/28-February-2012-IPAA.html>.

<sup>327</sup> Rufus Black and Robert Cornall, “2011 Independent Review of the Intelligence Committee,” 2011 (accessed November 29, 2012) <http://www.dpmc.gov.au/publications/iric/index.cfm>, 35; Australian Security Intelligence Organisation, “Information Briefs—ASIO’s Legislative Framework,” 2–3. For example, ASIO trains officers in “Values, Ethics and Accountability in ASIO.”

<sup>328</sup> Chalk attributed this lack of incident to “the intricate set of statutory safeguards and controls that have explicitly accompanied the agency’s operations” (Chalk, “Australia,” 42).

<sup>329</sup> Quoted in Cain, *Terrorism and Intelligence in Australia*, 283.



of the term “subversive” received heavy criticism. ASIO’s activities indicated a definition so broad it ensnared individuals acting in accordance with dissenting public opinions, and in 1977 a government commission criticized ASIO for equating left-wing or liberal with subversive.<sup>330</sup> In the early 1970s, news stories broke that the state police had collected information for ASIO on political dissidents, union leaders, and opposition party members, for political rather than security reasons. In contrast to its charter, which noted it “essential that the security service should be kept absolutely free from any political bias or influence. . .,” ASIO allegedly operated to protect the conservative ruling party. Critic of ASIO and journalist Jeff Sparrow claimed “...ASIO had been largely unaccountable and had been used as a political tool during the long reign of the Liberal-Country Party coalition from 1949 to 1972.”<sup>331</sup>

Examples of ASIO’s alleged political agenda and violation of mandate are abundant. In 1974, for instance, an ASIO investigation into Deputy Prime Minister Jim Cairns came to light, highlighting the Organisation’s apparent politicization. Per media and government reporting, ASIO investigated Cairns because he expressed political positions and supported protests in-line with socialist principals touted by the Communist Party of Australia.<sup>332</sup> Similarly, following Croatian separatists’ bombings of Yugoslavian offices in Australia during 1971–1972, ASIO reported to the left-leaning Labour Party that the Croatian threat was isolated and would not expand.<sup>333</sup> After hearing that a contradictory classified report existed, believing that his party had been purposefully misled, Attorney-General designate and Labour Party Senator Lionel Murphy went to ASIO headquarters and demanded to review files on the matter. Murphy claimed the files revealed a more serious threat than he was led to believe—including terrorist training camps in Australia—and that ASIO intended to withhold from the new Labour government information that contradicted the former government’s positions.<sup>334</sup>

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<sup>330</sup> Hocking, *Terror Laws*, 39, 47.

<sup>331</sup> Jeff Sparrow, “ASIO’s Weird, Incompetent Little Cold War,” *Crikey*, May 28, 2008 (accessed December 11, 2012) <http://www.crikey.com.au/2008/05/28/asios-weird-incompetent-little-cold-war/>.

<sup>332</sup> Hocking, *Terror Laws*, 16, 37, 44–45.

<sup>333</sup> *Ibid.*, 41.

<sup>334</sup> *Ibid.*, 42.

Notable for this study, as critics and government commissions indicated, left without formal ministerial guidance for most of its existence, by the mid-1970s ASIO was not fully responsible to the elected representatives of government—nor had it made an apparent effort to be so. As ASIO’s aggressive interpretation of its mandate came to light, however, the government shortened its leash. The ASIO Act of 1979 prohibited interference with lawful political expression and outlined the DG’s responsibilities as “to keep the Organisation free from any influences or considerations, including political, not relevant to its functions.”<sup>335</sup> Furthermore, in 1984, the Royal Commission on Australian Security and Intelligence Agencies (RCASIA) recommended that Australian services be made more accountable than in previous years.<sup>336</sup> Years of operations perceived as politicized had permanently tarnished ASIO’s reputation. Hocking aptly noted, “ASIO’s operations were seen as being based in considerations other than security. The allegation that still demands consideration today—that ASIO acted as the political police of the Liberal-Country Party Government.”<sup>337</sup>

When counterterrorism took a front seat and its powers expanded, increasing risk of public worry over civil liberties and potential for abuse, modern ASIO leadership made an effort to adhere to mandate and to advise the public of its powers and agenda. For example, in 2002 a bill put before Parliament sought to extend the Organisation’s authority to include hostile interrogations and detention of individuals—including children 14 to 18 years old—for questioning. Noting these controversial provisions, ASIO contributed to a report critical of the bill.<sup>338</sup> Additionally, when it assessed a need for expanded powers to combat terrorism, ASIO publically requested these special

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<sup>335</sup> Australian Security Intelligence Organisation, “Publications—ASIO’s Legislative Framework.” ASIO Act of 1979 Section 17 stated that “[t]his Act shall not limit the right of persons to engage in advocacy, protest or dissent and the exercise of that right shall not, by itself, be regarded as prejudicial to security, and the functions of the Organisation shall be construed accordingly,” 2, Section 17, Section 20.

<sup>336</sup> Australian Security Intelligence Organization, “Attorney-General’s Guidelines in Relation to the Performance by the Australian Security Intelligence Organisation of its Function of Obtaining, Correlating, Evaluating and Communicating Intelligence Relevant to Security (Including Politically Motivated Violence),” (accessed December 10, 2012) [www.asio.gov.au/img/files/AttorneyGeneralsGuidelines.pdf](http://www.asio.gov.au/img/files/AttorneyGeneralsGuidelines.pdf).

<sup>337</sup> Hocking, *Terror Laws*, 30.

<sup>338</sup> *Ibid.*, 212, 219.

authorities.<sup>339</sup> ASIO appears to have used its powers sparingly: between 2003 and 2007 ASIO executed only 15 questioning warrants and, as of 2007, ASIO claimed it had not used its detention powers.<sup>340</sup>

Despite this, two recent incidents raise concern over ASIO's willingness to violate its authority. First, in 2007 when the Supreme Court of New South Wales, Australia, dismissed charges against ul-Haque, it also found that ASIO officers had illegally kidnapped and falsely imprisoned ul-Haque.<sup>341</sup> Second, in 2011, the IGIS investigated ASIO for actions related to the 2001–2005 detention of Australian citizen Mamdouh Habib.<sup>342</sup> Despite indications of gross exaggeration by Habib regarding claims of torture, and the IGIS' finding that ASIO should have warned the government of Habib's transfer to Egypt but that it did not have a role in Habib's detention or hostile interrogation, ASIO's reputation took a hit.<sup>343</sup>

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<sup>339</sup> Australian Security Intelligence Organisation, "Information Briefs—ASIO's Legislative Framework," 2; Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security"; Jones and Ungerer, "Australia," 177.

<sup>340</sup> Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," xiv; Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security," 27.

<sup>341</sup> Tim Allard, "Terror Case Thrown Out," *Sydney Morning Herald*, November 12, 2007 (accessed November 27, 2012) <http://www.smh.com.au/news/national/terror-case-thrown-out/2007/11/12/1194766545813.html>; New South Wales Supreme Court, *R v Ul-Haque* [2007] NSWSC 1251, November 5, 2007 (accessed November 27, 2012) <http://www.lawlink.nsw.gov.au/scjudgments/2007nswsc.nsf/aef73009028d6777ca25673900081e8d/d9a9080227820bddca257389007c91e4?OpenDocument>; Chalk, "Australia," 41.

<sup>342</sup> Dana Priest and Dan Eggen, "Terror Suspect Alleges Torture," *Washington Post*, January 6, 2005 (accessed November 28, 2012) <http://www.washingtonpost.com/wp-dyn/articles/A51726-2005Jan5.html>; Natalie O'Brien, "Australians Saw Habib Tortured, Says Officer," *Sydney Morning Herald*, February 13, 2011 (accessed November 28, 2012) <http://www.smh.com.au/national/australians-saw-habib-tortured-says-officer-20110212-1aran.html>. In 2001 Habib was apprehended in Pakistan and held for debriefing regarding ties to the 9/11 plot. Pakistan then sent Habib to Egypt where he was held for several months before reportedly being transferred to the American-run Guantanamo Bay detention facility. He was released in 2005. Upon his return to Australia, Habib sued the government, alleging that he was abused during interrogation in Pakistan and Egypt, and that Australian officials were present during his interrogation.

<sup>343</sup> Natalie O'Brien, "ASIO Head Failed to Warn of Habib Removal," *Sydney Morning Herald*, March 24, 2012 (accessed November 28, 2012) <http://www.theage.com.au/opinion/political-news/asio-head-failed-to-warn-of-habib-removal-20120323-1vpbt.html>; Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," 50; Cain, *Terrorism and Intelligence in Australia*, 310–11; O'Brien, "Australians Saw Habib Tortured"; Priest and Eggen, "Terror Suspect Alleges Torture." Australian media continued to report on the matter well into 2012 and opposition party leaders turned their attention to the transfer of Habib to Guantanamo, accusing ASIO and DG Dennis Richardson of allowing an Australian citizen to be transferred to American custody, where he was allegedly abused.

Much of the recent criticism levied against ASIO, however, has not come from its counterterrorism work. Rather, it has been criticized for incidents related to its assessments in support of immigration security.<sup>344</sup> For example, in October 2012, Australia's High Court declared that the indefinite detention of Sri Lankan asylum seekers—based on ASIO's derogatory security assessment—was illegal.<sup>345</sup> ASIO is aware of the need to isolate itself from legal determinations that exceed its mandate (to provide intelligence assessments, not serve as an immigration court). For example, in 2012, when IGIS recommended that ASIO provide advice regarding the detention of persons for whom it has provided adverse security assessments, ASIO sought to avoid doing by noting that advising on these matters lay outside its authority.<sup>346</sup>

## **5. Public Opinion of ASIO**

As noted above, ASIO has a mixed reputation. The Australian news outlet *The Age* summarized: “[f]or much of its 51-year history, ASIO has been divisive. The left saw it as full of trench-coated right-wingers serving their masters...Now, ASIO finds itself in the novel position of being embraced as a key protector of Australian lives.”<sup>347</sup> ASIO was aware of its tenuous reputation. In its 2011–2012 Annual Report, ASIO noted that “[a]n enduring concern—but unfortunate reality—is the often unfounded speculation and commentary about ASIO’s activities.”<sup>348</sup> Despite the salvation of reputation brought by its counterterrorism mission, however, ASIO occasionally gave its critics cause to gloat. For example, after decades aggressively fighting Communist influences, in 1993 the AFP arrested an ASIO officer, George Sadil, on charges that he had spied for the Soviet Union for more than a decade.<sup>349</sup> More recently, in 2001, ASIO mistakenly raided the home of Australian Bilal Daye—its warrant was for a grocery store down the road. Added to

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<sup>344</sup> Roach, *The 9/11 Effect*, 333.

<sup>345</sup> Sid Maher and Lauren Wilson, “High Court Blow as Judges Sideline ASIO on Asylum,” *The Australian*, October 6, 2012 (accessed November 28, 2012) <http://www.theaustralian.com.au/national-affairs/immigration/high-court-blow-as-judges-sideline-asio-on-asylum/story-fn9hmlgu-1226489520197>.

<sup>346</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 50.

<sup>347</sup> *The Age*, “Why it’s ‘Really Cool’ to be a Spy”; Chalk, “Australia,” 38–39.

<sup>348</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 55.

<sup>349</sup> Sydney Morning Herald, “ASIO Mole Leaked Secrets for 15 Years: Report,” November 1, 2004 (accessed January 8, 2013) <http://www.smh.com.au/articles/2004/11/01/1099262774657.html>.

which, the 2007 muddled arrest and release of doctor Haneef only exacerbated a perception of ASIO folly.<sup>350</sup>

Despite these examples, supporters make the valid point that ASIO has not received due credit for its successes—successes such as Operation Pendennis,<sup>351</sup> the 2006 conviction of terrorism plotter Abu Hamza (aka Faheem Khalid Lodhi), and the deportation and arrest in France of his associate Willie Brigitte.<sup>352</sup> More recently, in 2012 ASIO received a “98 percent-positive” feedback rating on its reporting and an independent review indicated that ASIO’s efforts had contributed to the worldwide security effort.<sup>353</sup> ASIO’s good work has not gone entirely unnoticed by the public. One indication of positive public opinion was the rise in applications to ASIO, which tripled from 500 in 2000 to 1500 in 2002.<sup>354</sup> Although ASIO’s counterterrorism-related powers to detain, question, and intercept technical communications raise natural concerns, there is broad indication that Australians accept ASIO’s tactics. A 2005 Age-Poll survey of Australians indicated support for aggressive counterterrorism security methods that may

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<sup>350</sup> Tom Allard, “ASIO Settles Out of Court Over Botched Raid Case,” *Sydney Morning Herald*, November 2, 2005 (accessed November 28, 2012) <http://www.smh.com.au/news/national/asio-settles-out-of-court-over-botched-raid-case/2005/11/01/1130823210697.html>; Amnesty International, “Dr. Mohammed Haneef’s Case,” September 11, 2011 (accessed November 29, 2012) [http://www.amnesty.org.au/hrs/comments/dr\\_mohamed\\_haneef/](http://www.amnesty.org.au/hrs/comments/dr_mohamed_haneef/); Jamie Walker, “Mohamed Haneef Returns to Australia for Compensation Claim,” *The Australian*, December 17, 2010 (accessed November 29, 2012) <http://www.theaustralian.com.au/national-affairs/mohamed-haneef-returns-to-australia-for-compensation-claim/story-fn59niix-1225972636367>; Cain, *Terrorism and Intelligence in Australia*, 214–5; Chalk, “Australia,” 41.

<sup>351</sup> Kissane, “Tip-off”; Miller, “National Security.”

<sup>352</sup> Miller, “National Security.” Hamza and Brigitte were suspected of planning to attack Sydney’s electricity grid, among other Australian targets.

<sup>353</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” viii, 17.

<sup>354</sup> The Age, “Why it’s ‘Really Cool’ to be a Spy.”

cause civil liberty infringements.<sup>355</sup> In a 2007 study, 76 percent of respondents supported phone intercepts and 56 percent supported indefinite detention for terrorism suspects.<sup>356</sup>

The swell of recruits, however, has not included Muslim Australians or those with non-English speaking backgrounds, demographics essential to emphasizing ASIO's role as equal protector.<sup>357</sup> ASIO's role in proscribing groups as threats may have harmed efforts to win support of minority populations. A 2006 Security Legislative Review committee noted that nearly all of the groups proscribed (many based on ASIO assessments) were Muslim, causing a rift with Australian Muslims.<sup>358</sup>

#### **E. THE SERVICE'S COLLABORATION AND INFORMATION SHARING WITH COMMUNITY COUNTERPARTS**

Through mandate and proactive endeavor, ASIO works closely with its community counterparts. Although ASIO suffered the usual police/intelligence rivalries, a review of ASIO's community partnerships, officer secondments, regional and transnational coordination efforts, and support to coordinating bodies indicates a service that has a reputation for working across agencies and across countries. If ASIO projected one particular fault, it was the Organisation's tendency to hide information from its own government during its pre-counterterrorism years.

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<sup>355</sup> Daniel Baldino, "The Politics of Fear: Why Haven't Counter-terrorism Laws Changed?" *The Conversation*, April 11, 2012 (accessed December 5, 2012) <http://theconversation.edu.au/the-politics-of-fear-why-havent-counter-terrorism-laws-changed-6016>; Andrew Lynch, "Not Bombed Back to Dark Ages by Terrorism," *The Age*, August 4, 2005 (accessed December 5, 2012) <http://www.theage.com.au/news/opinion/not-bombed-back-to-dark-ages-by-terrorism/2005/08/03/1122748694940.html>.

<sup>356</sup> David Indermaur and Lynne Roberts, "Abstract: What Australians Think About Crime and Justice: Results from the 2007 Survey of Social Attitudes," 2009 (accessed December 5, 2012) <https://www.ncjrs.gov/App/Publications/abstract.aspx?ID=250034>. Data from the 2007 Australian Survey of Social Attitudes (AuSSA) on crime and justice.

<sup>357</sup> Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12."

<sup>358</sup> Roach, *The 9/11 Effect*, 326. The impact was not negligible: in 2012 DG Irvine admitted that the Organisation still needed to attract more immigrants, including Muslim recruits, into its ranks. Simon Benson, "ASIO Boss Says We Need More Muslim Recruits to Combat Terror Threats in Australia," *The Daily Telegraph*, January 24, 2012 (accessed November 29, 2012) <http://www.dailytelegraph.com.au/news/asio-boss-says-we-need-more-muslim-recruits-to-combat-terror-threats-in-australia/story-e6freuy9-1226252730137>.

## 1. ASIO's Work with Community Partners

Due largely to operational necessity, ASIO is known for working with the Australian intelligence community and, in particular, Australian state and national police. This positive state of cooperation, however, was not always ASIO's trademark. As noted above, in its early years ASIO purposefully kept tight reigns on its information—to include withholding information from its own government.<sup>359</sup> The ASIO Act of 1956 dictated that ASIO cooperate with government departments, but cooperation levels were determined by ASIO, not the government.<sup>360</sup> In 1979, the atmosphere within ASIO began to shift and it came to view communication as beneficial. The result of ASIO's legislative stewardship and independent inquiries, the ASIO Act of 1979 tasked ASIO to work with its intelligence counterparts, law enforcement entities, and foreign partners.<sup>361</sup>

ASIO appears to have held true to the spirit of the 1979 Act. According to its website, as of June 2009 ASIO maintained liaison relationships with “316 authorities in 122 countries.”<sup>362</sup> In support of these relationships ASIO places its representatives abroad and allows representatives of foreign services to take up office in Australia.<sup>363</sup> ASIO has personnel and information exchanges with the FBI, MI5, Canada's CSIS, and the New Zealand Security Intelligence Service.<sup>364</sup> ASIO's 2011–2012 Annual Report, however, revealed that new budget constraints have forced it to stem the growth of its overseas liaison offices.<sup>365</sup>

ASIO's cooperation with Australian counterparts is now considerable and enduring. A 2012 ASIO report highlights “the establishment of agreements and protocols with our close law enforcement and intelligence partners which aim to put in place

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<sup>359</sup> Hocking, *Terror Laws*, 31.

<sup>360</sup> *Ibid.*, 35.

<sup>361</sup> *Ibid.*, 143; ASIO Act of 1979; Australian Security Intelligence Organisation, “About ASIO.”

<sup>362</sup> Australian Security Intelligence Organisation “Information Briefs—Overseas Roles and Presence,” (accessed November 26, 2012) <http://www.asio.gov.au/Publications/Information-Briefs.html>.

<sup>363</sup> *Ibid.*

<sup>364</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 62.

<sup>365</sup> *Ibid.*, ix.

arrangements to more effectively share information and coordinate our efforts.”<sup>366</sup> ASIO’s closest working relationship is with the police. Per Chalk, “[i]n many ways, ASIO-AFP interaction is a product of trust and personal relationships that have evolved over time and that reflect the relatively small size of the Australian intelligence and law enforcement communities.”<sup>367</sup>

The ASIO-police relationship has deep roots. During the 1970s, in reaction to political demonstrations and industrial labor disputes, ASIO participated in a unified training and financing structure with the police. ASIO also used the police to acquire information from Australian states and territories.<sup>368</sup> Although the operational focus changed through the years, the relationships remained. As recent as 2004, ASIO trained in intelligence operations and tactical response with the Army and the AFP as well as with state police.<sup>369</sup> The ASIO-AFP’s most heralded cooperative effort came with Operation Pendennis, in which ASIO worked for over a year with the police.<sup>370</sup> In 2005, ASIO announced that, in response to Taylor Review recommendations, it would expand coordination with its law enforcement and intelligence partners. As part of this endeavor, ASIO made it a managerial requirement “to encourage and reinforce cooperation and regular engagement at the working level.”<sup>371</sup>

Despite its generally positive nature, the ASIO-AFP relationship is not without the normal police/intelligence tensions. In their study of ASIO, Chalk and William Rosenau commented on the matter:

While ASIO frequently does coordinate its tactical and intelligence operations with the AFP, it is not obliged to do so and has, on occasion,

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<sup>366</sup> Australian Security Intelligence Organisation, “Information Briefs—The Evolution of Australia’s Intelligence Services,” 4–5.

<sup>367</sup> Chalk, “Australia,” 31; Wesley, “Between Probity and Proficiency.”

<sup>368</sup> Hocking, *Terror Laws*, 139–140. In support of the counter-protest actions, ASIO received intelligence from the State police Special Branches.

<sup>369</sup> *Ibid.*, 175.

<sup>370</sup> Cain, *Terrorism and Intelligence in Australia*, 262; Kissane, “Tip-off”; Miller, “National Security.”

<sup>371</sup> Australian Security Intelligence Organisation, “Publications—Director-General’s address to the AFP Executive Retreat.”



deliberately withheld information on the basis of its own idiosyncratic calculation of the national interest. This caveat to bilateral working ties has caused some disquiet within the law enforcement community, eliciting a view that the ASIO-AFP relationship is neither two-way or, indeed, mutually beneficial.”

Chalk and Rosenau went on to note that the ASIO-AFP relationship since Bali 2002 may have deteriorated, largely due to disagreements over jurisdiction.<sup>372</sup>

ASIO’s cooperative efforts are not limited to government agencies. ASIO’s Business Liaison Unit works closely with the private sector regarding concerns such as espionage and information security. ASIO established the Unit in 2005 as a measure to facilitate information flow between the security apparatus to private businesses. Additionally, ASIO participates in the Trusted Information Sharing Network, which provides relevant, sensitive, information to the business and scientific communities.<sup>373</sup>

## **2. ASIO’s Secondments and Regional Offices**

ASIO uses secondments as a means to train its officers and enhance inter-agency cooperation. An officer is expected to serve on secondment to ASIS or the AFP at some point in their career. Reverse secondments are also a regular occurrence.<sup>374</sup> As host to the NTAC, ASIO opens its doors to officers from the AFP, ASIS, DSD, Department of Foreign Affairs and Trade, New South Wales Police, and Defense, among others.<sup>375</sup> ASIO’s secondments are not limited to Australian counterparts. In support of its overseas work and liaison relationships, ASIO offers exchange opportunities for close allies.<sup>376</sup> Also, as a means to enhance interoperability, ASIO provides briefers and participants to joint-intelligence community courses.<sup>377</sup> It has also sought to enhance connectivity with

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<sup>372</sup> Chalk and Rosenau, *Confronting the Enemy Within*, 52.

<sup>373</sup> Australian Security Intelligence Organisation Business Liaison Unit (accessed November 27, 2012) <https://www.blu.asio.gov.au/>; Chalk, “Australia,” 17.

<sup>374</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” 51.

<sup>375</sup> Australian Security Intelligence Organisation, “Publications—Report to Parliament 2011–12,” 10.

<sup>376</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” 51.

<sup>377</sup> *Ibid.*

customers throughout Australia by opening regional offices in each of the six Australian States, in addition to the Northern and Capital Territories.<sup>378</sup>

### **3. ASIO's Support to Coordinating Bodies**

Following 9/11 and the Bali bombings of 2002, a string of new counterterrorism-related bodies sprang up throughout the intelligence community. As the primary counterterrorism intelligence service, the Organisation provides intelligence to, and works closely with, post-9/11 coordination elements such as the Australian National Intelligence Coordination Committee. Moreover, since 2010, ASIO has played host to the Counter-Terrorism Control Centre and the NTAC.<sup>379</sup> The Organisation has also provided representatives to the nation's Joint Counter-Terrorism Coordination Unit to enhance communication with the police,<sup>380</sup> and as of at least 2007 it managed the Technical Support Unit (TSU), which provides specialized technical counterterrorism support to police and the Australian Defence Forces.<sup>381</sup> Furthermore, in order to enhance its cooperation with police and coordinating bodies, ASIO utilizes a nationalized computer system.<sup>382</sup>

### **4. ASIO's Missteps**

ASIO was not often criticized for a lack of communication with its counterparts. Although the standard police/intelligence and federal/local tensions over primacy and jurisdiction occurred, they were not out of the norm nor have they had a marked impact on operations. One incident, however, highlights the Organisation's potential to misstep. After the 2002 Bali bombings, ASIO was criticized because it failed to share appropriate

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<sup>378</sup> Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security," 23–24. From at least 2007 forward, the Organisation increased its regional office staffing and resource allocation specifically to foster their growth under an era of increasing counterterrorism and infrastructure security priorities.

<sup>379</sup> Australian Security Intelligence Organisation, "Information Briefs—The Evolution of Australia's Intelligence Services," 4; Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," 10.

<sup>380</sup> Chalk, "Australia," 30.

<sup>381</sup> Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security," 31.

<sup>382</sup> Hocking, *Terror Laws*, 173.

information with the Department of Foreign Affairs and Trade (DFAT), the body responsible for issuing travel warnings to Australians overseas. When the post-bombing inquiry found a lack of communication between ASIO and DFAT, ASIO admitted to over-compartmentalization of its information. The problem of undue secrecy, however, appears to have been largely relegated to the counter-subversive era of the 1950s-1970s. As author Michael Wesley noted, there was little concern over further missteps: "...beyond this isolated problem, there was a degree of confidence in the [Australian intelligence community] that the same scale of communication and responsibility failure would not occur [inside] Australia..."<sup>383</sup>

## F. CONCLUSION

This chapter evaluated ASIO against the four characteristics desired in a potential American domestic service. First, with regard to the primacy of the counterterrorism mission, it is clear that ASIO began as a counterespionage and counter-subversion organization.<sup>384</sup> Some, such as Hocking, viewed the late 1970s as "the arrival of terrorism in Australia," and "the impetus for transformation of ASIO's mission toward counterterrorism."<sup>385</sup> It is true that in response to the Hilton bombing counterterrorism was formally added to the Organisation's mandate in the ASIO Act of 1979. Nonetheless, "terrorism" was so broadly defined, and remained tied in application to political subversion, that it encompassed disruptive protest and active dissent as well as targeted violence.<sup>386</sup> Furthermore, ASIO maintained a diverse set of non-counterterrorism priorities into the early 2000s. Hence, although the national political system may have

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<sup>383</sup> Wesley, "Between Probity and Proficiency." The lack of a travel warning was made worse by an American travel warning that indicated concern regarding potential attacks in Bali and the U.S. Ambassador to Australia's warning to Australia about a potential attack the day prior to the Bali bombings.

<sup>384</sup> Hocking, *Terror Laws*, 25. ASIO's charter was to defend the Commonwealth from "external and internal dangers arising from attempts at espionage and sabotage, or from actions of persons and organizations, whether directed from within or without the country, which may be judged to be subversive of the security of the Commonwealth."

<sup>385</sup> Hocking, *Terror Laws*, 100.

<sup>386</sup> ASIO Act of 1979; Hocking, *Terror Laws*, 142–143, 157. Per Hocking, "the 1979 Act so broadly defined terrorism that it may include violent demonstrations." The ASIO Act of 1979 tasked the Organisation with countering "terrorism, whether directed from, or committed within, Australia or not," and politically motivated violence that included "acts that are terrorism offences."

turned its attention toward terrorism, the Organisation arguably could not be considered a counterterrorism-centered service in the modern sense until the events of 9/11 and Bali 2002 dictated change; when it proactively adjusted its organizational structure, recruiting methods, and training in a manner that aimed its mission and resources directly at terrorism. That said, although it advertises counterterrorism as its primary mission, and has dedicated a preponderance of its resources in support of such, ASIO remains dedicated to an exhaustive breadth of missions that have at times reduced its ability to service all needs (for example immigration assessment gaps). Moreover, despite its attention to transnational threats—and although foreign environments are principally the realm of ASIS and the Foreign Ministry—the persistent threat of terrorism surprised the Organisation when Australian facilities and citizens were violently attacked overseas in 2002, 2004, 2005, and 2009.<sup>387</sup>

Second, with regard to having an intelligence-led focus and culture, ASIO projects itself as a service dedicated to predictive intelligence collection and demonstrates this in its resource allocation, hiring efforts, and training programs. Since 2001–2002, however, in its HUMINT operations, acquisition of police-like authorities, and involvement in criminal prosecutions, ASIO has drifted from its intelligence moorings.<sup>388</sup> Like MI5, with the criminalization of terrorism and an increased role in prosecutions, the Organisation found itself directly engaged with the judicial system. Incentives began to shift and by 2005 “support to prosecutions” and “preemptive investigations” (that relied on evidence of a crime) had begun to dictate cultural values. ASIO now appears to be a hybrid; a “preventative-policing” service that uses intelligence.

Third, ASIO has been reasonably effective at earning and sustaining the public trust—in recent years. The Organisation has done so through a proactive public outreach program and, since 9/11, active support of oversight and control mechanisms. Additionally, although the service has had difficulty hiring minorities, its workforce is

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<sup>387</sup> Attacks against Australian interests overseas included Bali 2002, bombing of the Australian Embassy in Jakarta during 2004, bombing of the Australian Embassy in Iraq during 2005, Bali 2005, and attacks against hotels in Jakarta in 2009 that killed three Australian businessmen.

<sup>388</sup> Chalk, “Australia,” 15. Since expansion of its powers in 2003, ASIO has had the ability to detain and question terrorism suspects with a warrant and support of the police.

gender-diverse and ethnically representative of a highly homogenous population. Admittedly, prior to the turn of the century ASIO's ability to earn public trust was eroded by its excessive secrecy and political bias, but since its turn toward counterterrorism, the Organisation's reputation has improved. ASIO has its detractors, but skepticism as to its motives is usually rooted in ASIO's past than its current endeavors. As illustration, recent criticism of ASIO's occasional investigative folly or the overstepping of legal authority have been chalked up to confusion within the shifting legal framework or from officers being too aggressive in execution of their popularly-supported mission. Public distrust over the expansion of ASIO's counterterrorism authorities (intercept, detention, and questioning) revolved more around the legislation and related potential for civil liberty infringements than distrust of ASIO. This has been helped by ASIO's efforts to advertise its mission and mechanisms, coupled with the lack of a domestic attack and multiple operational "successes."

Lastly, ASIO's sharing of information and collaboration with its counterparts has been excellent. Given operational need and mandate, ASIO maintained a robust relationship with Australian national, territorial, and state police. These relationships included information and personnel exchanges as well as significant cooperation during lengthy investigations. In support of its role as lead-counterterrorism agency, ASIO created, housed, supported, and seconded officers to regional offices and national-level intelligence fusion elements. Additionally, ASIO has traditionally paid close attention to its international liaison relationships, relationships that will pay dividends in the fight against transnational terrorism.

## IV. SUMMARY ASSESSMENT AND LESSONS

This study endeavors to contribute to the debate over the need for a new domestic intelligence service in America, identifying *service-specific* characteristics desired in a post-9/11 service and isolating them from existing *system-dependent* evaluations. Chapter I identified the endogenous characteristics deemed ideal in a domestic intelligence service by policymakers, pundits, and academics during the post-9/11 discourse:

- 1) Counterterrorism should be the service's primary mission.
- 2) The service's function should be predictive intelligence gathering and its culture intelligence led.
- 3) The service should support the protection of civil liberties and earn the trust of the populace.
- 4) The service should collaborate and share information with its security community partners.

The study used these characteristics as a lens through which to evaluate two foreign services relevant to the debate—Britain's MI5 and Australia's ASIO. Chapters II and III assessed that, although MI5 and ASIO have storied and successful histories, the characteristics desired in the post-9/11 discourse were difficult to achieve in the modern counterterrorism context and did not fully manifest in “ideal” form in either service. In concluding the study, this chapter will synthesize key observations from the above qualitative assessments and offer lessons drawn from these assessments that may further debate in the United States.

### A. SUMMARY OF FINDINGS FOR MI5 AND ASIO

First, with regard to counterterrorism as the primary mission, both MI5 and ASIO began as counterespionage services focused on thwarting foreign and domestic efforts to sabotage national interests and influence politics. By 2012 they had transformed into services driven by counterterrorism missions, but to varying degrees. Motivated by a persistent and immediate threat, and despite difficulty hiring officers with a background necessary for counterterrorism, MI5 was nearer the “ideal,” strongly focused on fighting

terrorism since at least the late 1980s. Preoccupation with IRA terrorism, however, delayed MI5's proactive shift toward the looming threat of transnational Islamic terrorism.

ASIO too was focused on terrorism. Contrary to its mandate and separate authors' assessments that ASIO was counterterrorism-led by the end of the 1970s, this study found that, while Australian officials may have been acknowledged the threat, ASIO did not make a full transition until the attacks of 2001–2002, hence failing to reach the ideal.<sup>389</sup> This late transition was partly due to external factors such as a lack of persistent and immediate threat to the homeland and shifting definitions of counterterrorism. Moreover, it was also largely the result of internal issues, including maintenance of an exhaustive set of mission priorities beyond counterterrorism that diluted ASIO's counterterrorism focus and corrupted related incentives.

Second, in training, mission statement, and rhetoric, both services historically had an intelligence-driven mission and espoused a desire to focus on, and incentivize, the collection of predictive intelligence, but both fell short of the prescribed ideal. The rise of transnational and Islamic terrorism served to draw both services into sustained engagement with terrorism-related judicial processes, and a previously recognizable lean toward predictive intelligence collection faded for MI5 and ASIO. The inclination to conduct long-term, HUMINT-propelled operations was ceded to shorter-ranging operations in support of apprehension and prosecution on the public stage. More heavily focused on preventative intelligence through the 1980s, MI5 was better able to sustain the remnants of an intelligence-led culture, resulting in a more “neutral” adherence to the ideal. In contrast, ASIO's more involved history of security-related investigative work, in particular against political subversives, produced a service more akin to a preventive policing organization with intelligence duties.<sup>390</sup> Consequently, when the tide of

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<sup>389</sup> Hocking, *Terror Laws*, 100; ASIO Act of 1979.

<sup>390</sup> Concept echoed in Jones and Ungerer's description of ASIO's reaction to modern terrorism legislation, in Jones and Ungerer, “Australia,” 177.

intelligence-based terrorism prosecutions washed over the service after 2002, it was easily swept toward methods and incentives that appeared more law enforcement-led than intelligence-led.

Third, with regard to civil liberties and the public trust, both services benefited from the popularity of counterterrorism endeavors, generally adhered to their counterterrorism mandate, and were reasonably successful at securing the public trust. Despite this success, neither service was able to fully divorce itself from the controversial counter-subversion and counterespionage operations of their past. MI5's work to enhance openness, increase public engagement, and improve hiring opportunities for minorities was a notable improvement over its secretive and nepotistic past. Its reputation for having a politicized history, failure to stop the attacks of 7/7, and civil liberty infringements during decades fighting IRA terrorism, however, left MI5's reputation stained—calling into question its motivations and harming hiring efforts, leaving it short of the ideal.<sup>391</sup> Similarly, ASIO was unable to overtake its legacy. ASIO's politically controversial and secretive past made overcoming public distrust and cynicism difficult, in particular given the service's broad application of anti-terrorism measures to include monitoring peaceful protest and influencing immigration practices.<sup>392</sup>

Last, regarding collaboration and information sharing, with the exception of jurisdictional jealousies that naturally arise between intelligence and police peers, both MI5 and ASIO met the ideal. Counterterrorism necessitated day-to-day integration with the security counterparts, and both services took active measures to ensure effective collaboration and information sharing. In operational intent and resource administration, MI5 and ASIO became interlaced with—and often hosted—local and national law enforcement organizations, counterterrorism intelligence coordinating bodies, and foreign liaison. Table 3 depicts the qualitative assessment above.

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<sup>391</sup> For further insight to the civil liberty controversy surrounding Britain's anti-IRA operations, see David Bonner, "The United Kingdom Response to Terrorism," *Terrorism and Political Violence*, (4: 4, 1992); María José Moyano Rasmussen, "The Military Role in Internal Defense and Security: Some Problems," Occasional Paper #6, (Monterey, CA: Center for Civil-Military Relations, 1999), (accessed January 23, 2013) <https://www.hsdl.org/>; and Hewitt, *The British War on Terror*.

<sup>392</sup> Hocking, *Terror Laws*, 142–143, 157.



Table 3. Summary Qualitative Assessment of MI5 and ASIO

DESIRED CHARACTERISTIC		MI5	ASIO
1	Counterterrorism as the Service's Mission	+2	+1
2	The Intelligence Function and Culture of the Service	0	-1
3	The Service's Ability to Acquire and Maintain Public Trust	0	0
4	The Service's Collaboration and Information Sharing with Community Counterparts	+2	+2
Summary Qualitative Assessment		+1	0

Key: “+2” indicates near-ideal traits in the service; “+1” indicates traits akin to, but not, ideal, or with sharp limitations; “0” indicates qualitative neutrality (the service did not exhibit the ideal characteristics in a positive or markedly negative manner); “-1” indicates that the service exhibited traits tending toward contradiction of the ideal; and “-2” (not used) would indicate traits in strong contradiction to the ideal.

In summary, neither MI5 nor ASIO fully exhibited the four principal endogenous characteristics in an ideal manner as prescribed by the post-9/11 discourse. MI5 perhaps came closest given its near-ideal counterterrorism focus and interagency cooperation. Its weakness in supporting the protection of civil liberties as well as a declining culture of intelligence, however, raise concerns as to its value as a model to replace the FBI. Furthermore, this study indicates that an independent intelligence-only model—if evaluated on service-specific characteristics alone, and for reasons tied to execution of the modern-day counterterrorism mission—may *not* meet the expectations of the post-9/11 discourse or offer significant contrast to a law enforcement model, regardless of the model's counterterrorism effectiveness. Although this study has not found MI5 or ASIO ideal models for emulation, the above assessment offered several lessons to consider during debate over the American domestic counterterrorism intelligence apparatus.

## B. LESSONS THAT MAY FURTHER THE AMERICAN DEBATE

Through the preceding evaluation several lessons came to light. These lessons are by no means exhaustive. They do not fully capture the political difficulties inherent in developing and deploying a national counterterrorism apparatus. Nor do the following points fully account for the system-derived constraints on a service and its government.

Nonetheless, focused assessment of ideal, endogenous, characteristics in the two services deemed most relevant models for a new American service provided several valuable lessons that may further the debate over domestic counterterrorism intelligence:

**1. In the modern political and judicial environment, an “intelligence-only” culture and focus is an ideal that can be difficult to achieve and maintain over the long term.** Although persistent, intelligence-led cultures and their respective missions become diluted and mixed over time when soaked in counterterrorism’s political and judicial context. An intelligence service cannot conduct its counterterrorism mission in a vacuum. Rather, it is influenced by, and in turn influences, community partners, coordinating bodies, policy, judicial processes, and politicization of terrorism as a mission. Despite culture and intentions, these influences steer intelligence services engaged in counterterrorism toward law enforcement methods, thereby both frustrating efforts to conform to a policing model *and* eroding the benefits of a culture of intelligence. MI5 demonstrated this issue when it became an increasingly integral part of U.K. terrorism trials and investigations, and subsequently lost some of its intelligence-led incentives.<sup>393</sup> As MI5 became increasingly, officially, responsible for the outcome of the nation’s counterterrorism operations, arrests and prosecutions became a measure of success. The more MI5 leadership touted its support to successful prosecutions, the more it adopted a law enforcement-like culture.<sup>394</sup> Per Chapter I, and as evidenced by recent U.K. counterterrorism operations, it follows that MI5 officers will eventually be incentivized to seek out short-term gains rather than devote time to recruiting a long-term penetration of a terrorist network.

The cost of this shift in focus was not negligible. Pressure to support counterterrorism trials, in part, led to a reduced focus on long-term operations in favor of more immediate gains such as rounding up a local network rather than fully investigating their associates (e.g., MI5 missed 7/7 bombers Mohammad Sidique Khan and Shezad

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<sup>393</sup> Concept also in Clutterbuck, "The United Kingdom," 141.

<sup>394</sup> It is worth noting that MI5 may never have been far from a law enforcement role. Since its beginning the Service has worked closely with Scotland Yard, with the latter often serving as MI5’s enforcement arm. Although MI5 preaches predictive intelligence, its proximity to the “arresting end” of the operation brings into question its distance from executive authorities.

Tanweer during a previous operation, and made no apparent headway to penetrate attacker Parviz Khan's higher contacts). Granted, engagement of intelligence officers in the courts and the subsequent development of a culture of preventive policing (one that includes intelligence collection, like in the ASIO model) may ultimately serve the state's purposes. This study indicates, however, that a government cannot involve its intelligence services in the courtroom and concurrently maintain a strong and viable culture of forward reaching, long-term, counterterrorism operations. Penetrations will become more police-like (HUMINT in the form of criminal informants and community outreach) and operations will become near-term and defensive in nature.

**2. Judicial processes that directly involve intelligence services may reduce long-range predictive intelligence collection and increase police-intelligence service overlap.** As intelligence services increasingly become integral to the process of anti-terrorism criminal prosecutions—and the necessarily legal processes of evidence, interview, and detention—it must be expected that the intelligence service will tend toward protection of its reputation, its officers, and its prosecution success rate. This protection will be achieved by adjustment of procedures toward collection of evidence in a manner that relies *less* upon assessment and prediction of future threats and *more* on removal of reasonable doubt. Given this adjustment, it is likely that police and intelligence services will increasingly overlap or become redundant—in particular as intelligence services transform their collection and information dissemination processes to better support enforcement of the criminal code—and service incentives will begin to shift. In time, a predictive intelligence organization that accepts operational failure as a necessary part of the process of pursuing future threats will be traded for an organization that is less risk adverse and seeks a preponderance of information to indicate that a crime has been, or will be, committed in a manner that warrants immediate legal action.

**3. Close interaction between law enforcement and intelligence services may also produce law enforcement-based incentives in the intelligence service.** As services coordinate across cultures they begin to adjust their respective procedures and operations in a manner that shifts incentives toward a unitary methodology. For example, in order to acquire local-level intelligence and support counterterrorism investigations

geared toward prosecutions, ASIO involves the police early and intimately in investigations that appear to have a criminal lean with potential for arrest. According to the Organisation, this methodology allows it to “maximize the opportunity for law enforcement agencies to collect evidence.”<sup>395</sup> While this is undoubtedly true, focusing on early cooperation with law enforcement agencies may have the additional consequence of fostering law enforcement incentives and methodologies within the intelligence agency. Given premature and regular interaction with law enforcement, intelligence officers may increasingly seek out criminal evidence to the detriment of pursuing more nebulous predictive intelligence. For instance, knowing that their cases are intended primarily to support law enforcement operations and related prosecutions—or that they themselves may be called to testify in court—intelligence officers may tend toward risk aversion in their operations; they may focus on career-enhancing “success” in the form of arrests and convictions rather than on more uncertain long-term operations.

**4. Despite the above, in an age of counterterrorism the gap between a domestic intelligence role and law enforcement responsibilities is narrow, and at times arbitrary.** Given the immediacy of the threat and the desired end-state of arrest, clearly demarcating intelligence from law enforcement creates a division between missions that is at best narrow, and at worst non-existent. Chalk and Roseau noted, “...divesting the intelligence function from law enforcement has necessarily meant that MI5, ASIO, CSIS, and the DST have had to operate in close tandem with their respective national police forces in terms of terrorist arrest, detention, and general threat mitigation.”<sup>396</sup> In the case of both MI5 and ASIO, the services worked so closely with their police counterparts as to seem one unit (in fact, their close cooperation was heralded by the government and incentivized within the services; e.g., Operation Pendennis). As a result, the police may stand merely as an extension of the intelligence service; they become the intelligence service’s gun and handcuffs. This reality weakens, or at least

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<sup>395</sup> Australian Security Intelligence Organisation, “Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security,” 27.

<sup>396</sup> Chalk and Rosenau, *Confronting the Enemy Within*, xiv. Treverton noted the same: “ASIO’s intrusive measures...generally are undertaken in conjunction with the [AFP]...” (Treverton, *Reorganizing U.S. Domestic Intelligence*, 62).

alters, the value of the debate outlined in Chapter I regarding the differences between culture—in particular the ability of police services and intelligence agencies to protect civil liberties by upholding due process.<sup>397</sup> In short, system pressures may trump service design and responsibilities.

**5. Counterterrorism ties the service to politics.** In contrast to the more secretive mission of counterespionage, counterterrorism may play out in the public eye and serve as a political lever. Given physical and immediate threat to their constituency, political officials are keen to appear strong on terrorism, in particular when counterterrorism plays out in the courts. Consequently, operational outcomes become political outcomes, and to capitalize politically successes must be made public. For instance, prosecutions are obvious measures of success. The secrecy associated with long-term intelligence operations that build from one source or network to the next, however, offers limited political reward.

**6. There are hidden advantages to intelligence-led cultures that may outweigh arrest and prosecution.** Arrest and prosecution offer tactical but not necessarily strategic victory. For example, bringing an end to terrorism may require negotiation, or at least engagement, with terrorist leadership.<sup>398</sup> In this vein, an advantage of an intelligence service having the lead in countering IRA terrorism was the ability of an intelligence service rather than a prosecution-oriented law enforcement service to broker secret negotiations between the IRA and the government. In one instance, in February 1993 the IRA reached out to British Prime Minister John Major via an intelligence service conduit. That communication sparked the series of negotiations that

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<sup>397</sup> See Chapter I for commentary on this debate. Council on Foreign Relations, “Does the United States Need a Domestic Intelligence Service?”; Federal Bureau of Investigation, “FBI Responds to Call for Domestic Intelligence Agency.”

<sup>398</sup> See Audrey Kurth Cronin, *Understanding the Decline and Demise of Terrorist Campaigns* (New Jersey: Princeton University Press, 2009) and Mitchell B. Reiss, *Negotiating with Evil* (New York: Open Road, 2010), for a detailed discussion of state efforts to engage and negotiate with terrorists.

would lead to the Good Friday Agreement in 1998.<sup>399</sup> While law enforcement services may very well have been capable of such an intelligence coup, given their mandate (arrest and prosecute) they would not likely have been the IRA's preferred choice of conduit, lest IRA members become instantly subject to entrapment and arrest.

**7. Highlighting the counterterrorism mission brings public support, but the process of criminalizing terrorism can erode the reputation of an intelligence service.** Counterterrorism is more popular with the public than counter-subversion or counterespionage. It draws new recruits and enhances asset pools. Both MI5 and ASIO enjoyed higher applications for employment and public support after their shift to counterterrorism. That said, for all of the potential strategic and legal benefits of criminalizing terrorism, intelligence efforts become muddled with policing when terrorism is treated as a distinct legal offense (rather than as an umbrella term for a strategy or tactic that includes separate, previously criminal, activities such as arms possession or conspiracy to commit murder). For example, after the Australian Security Legislation Amendment (Terrorism) Bill of 2002 and related amendments were passed, *terrorism* itself became an official criminal offense. Related, ASIO's immediate boss, the Attorney General, rather than the judiciary, decided whether or not a group should be proscribed under terrorism definitions. Consequently, as Jones and Ungerer aptly highlighted, this moved ASIO "into the arena of preemptive policing...[and] eroded the rule of law and government openness and accountability."<sup>400</sup>

**8. Similarly, in helping to develop legislation and statutory powers, a service's reputation becomes intimately connected with the results of the legislation.** MI5 and ASIO both provided input and advice to officials responsible for drafting counterterrorism legislation, subsequently tying both services to both the policy process

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<sup>399</sup> Andrew, *Defend the Realm: the Authorized History of MI5*, 782. The conduit was described by Andrew as an "intelligence link used for secret communications." Separate sources have indicated that the conduit was likely an MI6 officer (see Peter Taylor and Andrew Williams, *Behind the Mask: The IRA and Sinn Féin*, (U.S.A.: PBS Frontline, 1997), video, 225 minutes, <http://www.pbs.org/wgbh/pages/frontline/shows/ira/etc/script.html>).

<sup>400</sup> Jones and Ungerer, "Australia," 177. Australian Security Intelligence Organisation, "Publications—Submission to the Parliamentary Joint Committee on Intelligence and Security" (February 28, 2007), 41. In Australia, the case is similar with counterespionage. The ASIO Act 1979 does not define espionage. Therefore, ASIO relies upon criminal code to define its counterespionage parameters.

and the resulting statutes. For instance, ASIO's role in formulating anti-terrorism legislation and defining its own enhanced powers after 9/11 uniquely bound its reputation to the new legislation, and their restrictions on civil liberties.<sup>401</sup> Regardless of the necessity of the enhanced authorities, their sharply limited use, and the public approval they received, ASIO's active role in seeking the powers revealed its influence on policy and cast doubt on its ability to remain objective in pursuit of targets.<sup>402</sup> Similarly, ASIO's participation in the process of proscribing groups harmed its ability to secure the public trust. The Organisation's direct participation in determining the criminality of groups or individuals opened the door to a perception that ASIO manipulated the list to justify its past or ongoing actions, or as a means to acquire political and financial support for its investigations. Although ASIO's role fell within its official mandate, its direct input to such a process—rather than simple submission of intelligence and analysis upon which Australia's lawmakers make their own legal determinations—risked public perception of a corruption of the process.<sup>403</sup>

**9. Despite the popularity of the counterterrorism mission, an intense focus on terrorism may hinder other missions.** MI5 and ASIO undoubtedly placed greatest emphasis on the counterterrorism mission. Yet, they also maintained a focus on counterespionage, counterproliferation, and emerging threats.<sup>404</sup> Despite success in these areas, weaknesses can be identified. MI5 was forced to poach resources and personnel from counterespionage and counterproliferation sections in order to meet the demands of counterterrorism. The resource drain, however, did not necessarily stem from operational matters, given that counterespionage and counterproliferation can overlap with

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<sup>401</sup> Cain, *Terrorism and Intelligence in Australia*, 235. A 2003 act that afforded ASIO the power to detain and question those with information in support of terrorism investigations—was drafted with heavy input from DG Richardson.

<sup>402</sup> Roach, *The 9/11 Effect*.

<sup>403</sup> Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," 16.

<sup>404</sup> Clutterbuck, "The United Kingdom," 115 and 122; Lowenthal, *Intelligence*, 346. In 2001–2002 MI5's most notable operations were in the area of counterespionage (the investigation and arrest of two persons with access—one a British Aerospace guard, the other a BAE Systems contractor—for their attempts to pass sensitive information to the Russians (Andrew, *Defend the Realm: the Authorized History of MI5*, 813).

counterterrorism.<sup>405</sup> Rather, the drain on critical resources came from MI5's presence in the courts: the service experienced a marked increase in demand on its resources due to the increased legal scrutiny that came with judicial review and police-like investigation practices.<sup>406</sup>

**10. The use of narrow and specific legal definitions, as well as rigorous oversight, will enhance effectiveness, the protection of civil liberties, and the maintenance of public trust.** An intelligence service will, when allowed, use every tool in its toolbox to accomplish the mission at hand. Former Director of the CIA Michael Hayden once posited the mindset of intelligence services: “[w]e’re going to live on the edge... We’re pretty aggressive within the law. As a professional, I’m troubled if I’m not using the full authority allowed by law.”<sup>407</sup> As evidence of the dangers of nebulous legal mandates, without well-defined operational boundaries ASIO extended its mission to meet its charter’s intent—security of the Commonwealth—in a manner that addressed lawful dissent as a subversive threat. Narrowing definitions for threats such as subversion, however, is not a straightforward solution to service overreach. Bloating of mission is a danger inherent to the task of acquiring predictive intelligence. For law enforcement agencies, a crime such as subversion is predicated upon known activities. In contrast, intelligence agencies are tasked to identify patterns of activity and predict whether they may, or may not, manifest in criminal undertaking. Contemplation becomes cause for investigation, which in turn risks violation of civil liberties in the form of premature state action. In this regard, well-defined mandates and definitions should be combination with rigorous internal and external oversight.<sup>408</sup> Treverton referred to this matter:

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<sup>405</sup> As the service’s assessed, terrorists have a keen interest in weapons proliferation, may be supported by hostile foreign powers, and may try to penetrate the service with hostile agents. Hence, a service’s attention to areas such as counterespionage and counter-proliferation were symbiotic to its broader counterterrorism mission.

<sup>406</sup> U.K. Intelligence and Security Committee, “2010–2011 Intelligence and Security Committee Annual Report.”

<sup>407</sup> Famous Quotes, accessed May 30, 2012, <http://www.famousquotes.com/author/michael-hayden/>.

<sup>408</sup> Dahl, “Domestic Intelligence Today”; Bryant, “America Needs More Spies.”



However, effective government organizations are at collecting and using domestic intelligence, if they are not specifically tasked and overseen, the focus of intelligence activities can drift from a specific threat to broader views of what might be destabilizing to the nation. That, in turn, creates a risk that individuals will become targets of government attention because of mere dissent rather than the potential for violence.<sup>409</sup>

Furthermore, if intelligence-led cultures are desired, then provision of guidelines from elected officials as to statutory interpretation are also instrumental for the protection of civil liberties (e.g., when can the service determine its limits? when does the state?).<sup>410</sup> Some form of discretion, however, must remain for an intelligence service to properly function and to avoid undue political influence. As Hocking elaborated, “ministerial directions may not in fact be ‘lawful’ and [service mandates] should not be interpreted as denying [service] discretion.” Like a soldier, the intelligence officer must be given leeway to determine lawful and ethical orders from unlawful and unethical orders.<sup>411</sup> Similarly, those who direct intelligence services must accept that in providing well-defined boundaries and authorities they too may suffer the pain of attribution and political responsibility when the services act at the legal and ethical limits of their mandate.

**11. Reorientation of mission should be driven by anticipated need, not organization survival, in order to prevent the service from becoming reactive and shortsighted.** During times of transition (e.g., from counterespionage and counter-subversion to counterterrorism), the service’s efforts may be driven as much by a desire for organizational survival as mission, and that may have negative consequences. For example, MI5’s move into counterterrorism was born as much out of need to survive post-Cold War budget cuts as it was by national security. Forcing a service to transform quickly or face dissolution promotes organizational survival over mission. The service then addresses short-term, politically palatable threats with limited-risk methods rather than investing in long-term operations necessary to predict and prevent strategic dangers

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<sup>409</sup> Trevorton, *Reorganizing U.S. Domestic Intelligence*, 11.

<sup>410</sup> Hocking, *Terror Laws*, 50–51. Concepts drawn from Hocking’s assessment of Justice Hope’s commission to investigate ASIO.

<sup>411</sup> *Ibid.*, 52.

to the nation. Hence, the service risks becoming reactive and may fight the “last war” not the next. The consequences could be grave. If, as Hewitt noted, MI5 had maintained its focus on transnational terrorism—in particular after recognizing the rise of Islamic extremism in the 1990s—rather than protecting itself by extending into organized crime-fighting, it may have been in a better position to prevent 7/7. Although Hewitt’s comments are subjective and cannot be tested, they speak to the danger of a service reorienting its agenda to ensure survival rather than holding steady in the production of intelligence that predicts threats.<sup>412</sup>

**12. Related to the above, rapid transitions in mission can affect the service’s ability to meet new expectations.** A rapid or aggressive shift in incentives, even when based on new threats rather than organizational survival, creates an environment where officers hastily leap at new goals instead of systematically building lawful and cooperative bridges to accomplish their mission. It can also result in failure when new skills are not adopted as quickly as new incentives. When ASIO was drawn into criminal proceedings in support of its counterterrorism mission, its officers remained unprepared for the courtroom. They lacked the legal knowledge regarding evidence chains and due process necessary for successful prosecutions. As a result, terrorist prosecution rates were low.<sup>413</sup>

**13. Compounding the above, fluid political expectations may lead to mixed results.** A political desire for rapid action and public displays of state power (e.g., thwarted terrorist attacks and resulting arrests) corrupt the service’s ability to meet the expectation of gathering long ranging predictive intelligence. For example, there were indications that a culture of intelligence was, at least initially in the 1990s, incompatible with the United Kingdom’s expectations of MI5’s counterterrorism mission. Whereas most of the post-9/11 American discourse called for in-depth operations driven by intelligence to fight terrorism, British criticism chided MI5 for being too long-term focused. Early arrests, critics argued, would have helped save more lives than lengthy intelligence operations. The result was the rise of risk-averse methods that relied heavily

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<sup>412</sup> Hewitt, *The British War on Terror*.

<sup>413</sup> Cain, *Terrorism and Intelligence in Australia*, 277.

on near-term action and analysis over HUMINT collection.<sup>414</sup> Unfortunately, cultures are difficult to adjust. As political expectations shifted away from long-term intelligence operations toward immediate ones, MI5 lost officers who were frustrated by its inability to change culture. According to critics such as Fielding and Hollingsworth, MI5's origins in counterespionage stifled its ability to transition from Cold War-specific management methods; MI5 remained tied to bureaucracy, protocol, secrecy, and analysis as opposed action. This contributed to an officer attrition rate three times higher than normal, as of 1997.<sup>415</sup>

**14. History matters, and a service may benefit from rebranding.** Whether based in fact or fiction, MI5 and ASIO's reputations were mixed, in particular with regard to protection of civil liberties. When criticism was levied against the services, however, it stemmed from transgressions (real or perceived) that occurred during counter-subversion investigations of the 1960s–1980s, wherein both were accused of being more a tool of the ruling political party than a national security force.<sup>416</sup> Officers of the modern MI5 and ASIO, therefore, suffer the sins of their predecessors. MI5's turn toward counterterrorism in the late 1980s, however, put it back on stronger footing with the public; its successes against the IRA and Islamic terrorists were seen as victories against a threat to all citizens, rather than a political party, and helped to increase public trust in the service. Nonetheless, as noted above, efforts to recruit minorities and improve media image still suffered from previously depleted public trust. In the 2000s when the counterterrorism mission called for increased diversification of its officer corps, MI5 found itself closed off from ethnic and religious groups that shared its desired end state, but had little trust in the service. ASIO suffered a similar fate with regard to media image and public skepticism over its intentions, despite the popularity of its counterterrorism agenda. Britain and Australia, therefore, may have been better served by the rebranding

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<sup>414</sup> Fielding and Hollingsworth, *Defending the Realm*, 11.

<sup>415</sup> *Ibid.*, 283.

<sup>416</sup> Clutterbuck, "The United Kingdom," 139. For MI5, this period may not be the blemish it is often perceived to be. Evidence disclosed during MI5's file release program and Christopher Andrew's study of MI5 indicated that the UK had legitimate cause for concern from subversives during the 1970s and 1980s. Coupled with the threat of IRA terrorism, the government was prudent to investigate potential threats. Moreover, investigating these groups was well within MI5's official mandate.

of MI5 and ASIO (e.g., full restructure and renaming) or by the creation of a new service that was unblemished by the past.<sup>417</sup>

**15. History has also shown that openness is absolutely essential to earn public trust.** With the obvious exception of disclosing operational methods and information detrimental to security, a service is well served by providing full, unfettered access to its leadership. Leadership can contribute to public discourse on the service's mission, strategic vision, and tactics. Of the services studied above, prior to coming "into the light," all falsely held to the mantra of "intelligence successes can rarely be known" and the fallacy that explaining how they were successful was tantamount to exposing sources and methods. ASIO, for example, peddled the line that as "an organisation working in the public interest, for the protection of the public, its successes can rarely be published."<sup>418</sup> However, accurate, this position does little to satisfy public skepticism in the face of scandal. Left without information, the media and the public will make presumptions built upon what they know—and what the public knows can be an unrepresentative mosaic of folly and failure. Candor and openness regarding the service's specific agenda, and the authorities it needs to pursue that agenda, are vital to assuage cynicism and distrust.

**16. In carrying out a counterterrorism mission, necessity will drive collaboration but it may not eliminate cultural differences—and that is okay.** By most accounts, as of 2012 MI5 and ASIO had an excellent working relationship with community counterparts, including law enforcement elements. Although mutually beneficial, cooperation and information sharing should not be expected to always overcome cultural barriers—nor should these barriers be seen as removing opportunity for success. Despite good intentions, operational need, and the general effectiveness of coordination efforts, the fundamental differences in culture between intelligence and law enforcement personnel will likely persist in the near term. For instance, MI5's detractors

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<sup>417</sup> The FBI has been subject to the same historical reputation stains. In its 2004 report the 9/11 Commission raised anew the FBI's past transgressions, "[t]he FBI was criticized, rightly, for the overzealous domestic intelligence investigations disclosed during the 1970s. The pendulum swung away from those types of investigations during the 1980s and 1990s..." (*9/11 Commission Report*, 423).

<sup>418</sup> Australian Security Intelligence Organisation, "Publications—Report to Parliament 2011–12," 45.

argued that any communication rifts between the Service and the police stemmed from MI5's culture of aloofness and secrecy, which they claimed was a natural state of being for an intelligence organization. Nonetheless, MI5's operational relationship with police counterparts was generally excellent. Given the perseverance of culture, a service originally designed to remain in the shadows, and imbued with an instinctive sense of secrecy, may find it markedly difficult to break the binds of its secretive culture. These tendencies, however, do not necessarily outweigh an operational imperative to communicate. In this regard, the oft-maligned communication gap between the CIA and FBI may stem more from barriers erected by disparate mission arenas (i.e., domestic and foreign) than culture.

### C. CONCLUDING THOUGHTS

“This is not a criticism of the FBI, the world's premier law enforcement agency...The criticism is of those who expect a law enforcement organization to transform itself into an intelligence service.”<sup>419</sup>

—former Counterterrorism Ambassador Henry Crumpton

In the preceding pages this thesis sought to reframe the often system-based debate on domestic intelligence. The above case study evaluations and resulting lessons are by no means inclusive of every factor that determine what a service should do, or how it should be employed, to protect the homeland from near and distant threats. This study, however, did suggest an important overarching consideration—that the ideal characteristics expected in a domestic security service may prove unrealistic. The ideal characteristics, however desired or necessary they may be, are not only difficult to achieve in the modern counterterrorism milieu, a strict pursuit of them may produce counterproductive results.

A counterterrorism-centered focus and an intelligence-led culture do not rest easily together within the contemporary counterterrorism framework for two principal reasons. The first problem is that cultures are slow to change, creating a disconnect between a well-established intelligence-led culture and the political and legal

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<sup>419</sup> Crumpton, “Intelligence and Homeland Defense,” in *Transforming U.S. Intelligence*, 207.

expectations of modern counterterrorism agendas. The second problem is that over time these agendas may slowly begin to reshape an intelligence culture into a law enforcement culture, contradicting the ideals set out by the post-9/11 discourse. Although MI5 and ASIO moved toward a counterterrorism-driven mission and enhanced cooperation with counterterrorism counterparts, these moves cost them an intelligence-led focus. Despite intent, origin, and mandate, the British and Australian intelligence services were drifting toward becoming law enforcement-led models and potential strategic failure (according to the post-9/11 discourse). In this vein, modern counterterrorism programs place demands on domestic intelligence services—to include supporting criminal prosecutions and equating arrests with success—that cause the services to fall short of expectations. Counterterrorism as a primary focus may meet national security needs, but unless a service and its officers are freed from directly supporting criminal prosecution of terrorism cases, and able to avoid related incentives, the move will erode the ideal characteristic of an intelligence-led culture—potentially costing a nation the predictive intelligence it desperately needs.<sup>420</sup> This contradiction in expectations and outcomes becomes even more exacerbated when changes are hurried, such as with MI5 and ASIO following the 9/11 and Bali 2002 attacks. Cultural persistence may prove detrimental to a service's ability to adapt to new and fluid expectations. Regardless of how justified changes may be, when expectations shift quickly, well-established services struggle to transform. Their culture lags behind, dragging with it incentives, tradecraft, and officer morale. On the positive side, this slow adjustment indicates that a deeply embedded intelligence culture is not easily swayed by the winds of change and may endure despite erosion under criminal-system pressures.

For the United States, this assessment suggests three considerations with regard to the FBI. First, the FBI's well-established law enforcement culture and successful history of policing will likely continue to hinder it from reforming quickly to meet intelligence-related expectations. Second, ordering the FBI to reform only puts the Bureau in an

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<sup>420</sup> This is not to say that a service should not be held to legal standards that protect civil rights, nor should an intelligence service's officers be protected from prosecution if they commit crimes in the name of "duty." Rather, it speaks to participation in formal, criminal, judicial processes as an arm of the state (rather than as a "defendant.")

impossible situation—expecting a service to become the nation’s lead provider of predictive domestic counterterrorism intelligence while concurrently maintaining primacy over federal law enforcement is contradictory. Lastly, if system-induced burdens on the intelligence provider (in particular with regard to evidence collection and criminal prosecution) are not adjusted, creation of a new, independent, intelligence service would be in vain—it would slowly evolve into a law enforcement-led service.

Additionally, aspirations for an American service to garner public trust and protect civil liberties may be smothered by politicized expectations that lead to loosely defined mandates and misuse of the service. Intelligence agencies serve at the behest of state leadership. MI5 and ASIO lost public trust during years hunting political opposition and Communist subversives, but they did so largely by acting at the behest of the government in power—not entirely of their own design. Facing political pressure to thwart seemingly immediate and dire threats, it is difficult for a service’s internal mechanisms to overcome political directives that may be seen as harming liberties and therefore damaging trust. Lending credence to the argument that security and liberty exist on a “sliding scale,” the state and the service may view the choice as between the lesser of two evils—extend the service’s powers, potentially infringing on liberties, or risk attack. The balance, however, may not be so difficult. According to the British and Australian experiences, openness is the key. The best practice a service (and government) can employ to garner trust and help protect itself from misuse is a policy of robust openness regarding its mission and agenda, in particular through submission of its legal authorities to the public for approval. Much as Britain’s and Australia’s loosely defined, secretive, and politicized counter-subversion agendas of the 1960s–1980s led to violation of civil liberties and loss of public trust, a lack of refined mission parameters, murky legal authorities, and shifting definitions for terrorism-related criminal offenses risks thrusting today’s services into a public-trust quagmire of the state’s creation.

Not all of the post-9/11 expectations proved a bridge too far. Coordination and sharing of information with counterparts was driven chiefly by necessity. When need demanded, the services actively extended their communication networks, enhanced interoperability, and shared information. Interestingly—and although full assessment

requires further research—this study did not uncover a vast improvement in coordination between security community partners as a result of national-level bureaucratic bodies. Rather, prior to, or concurrent with, the formation of national-level coordinating elements, services worked together as needed and service-to-service measures alone (such as regional centers and internal coordination offices) appeared to meet the post-9/11 discourse’s expectations. Hence, government time and energy may be better spent directing intelligence-related resources, refining legal authorities, and acquiring public support for its agenda, than on formation of new, monolithic, national-level coordinating bodies.

The events of September 2001 revealed fragilities in America’s national security, and those charged with strengthening it rightfully searched for improvements. In the rush to plug perceived holes in defense, however, the resulting debate and amendments focused on system-based issues, often leaving detailed assessment of service-specific matters for another day. When attention did turn to the services tasked with protecting America, the discourse had high expectations. This study’s conclusions do not necessarily indicate that the model characteristics desired by the post-9/11 discourse were incorrect. Rather, they suggest that, strict adherence to these ideals may result in a service that fails to satisfy all of America’s expectations.

There is a threat hidden in expectations of an “ideal” that may not be achieved despite a service’s best efforts—*undue reforms to the service and the system*. Placing demands on a service that ignore the potentially contradictory nature of the expected ideal characteristics leads to a pretense of service failure, when in fact the desired characteristics may be inherently juxtaposed and counterproductive. Consequently, the government may unjustly find the service lacking and unnecessarily seek sweeping changes. With a decade of reflection behind us, reframing the debate may help inform discussion on counterterrorism intelligence in America, so we may understand not only what we lack, but also what we should seek.

The above findings indicate that further study of expectations, with regard to what is desired in a service, would complement efforts to improve the national security apparatus and its essential agencies. Given the transnational nature of terrorism



subsequent studies may build upon this thesis by assessing services tasked with foreign collection (e.g., the CIA, ASIS, and MI6). Related, future studies may benefit from isolating sub-state from state-initiated terrorism. Such may help elucidate the advantage of different approaches (i.e., are the ideal characteristics and related expectations relevant to both sub-state and state-guided actors?). Given that this study found a gap between the expectation of an intelligence-led culture and the counterterrorism mission as applied in the modern era, further study of police security services—to possibly include the AFP, PSNI, Scotland Yard, and SSS—may add value by determining if they suffered similar or related frustrations. In addition, given this study observed a trend away from intelligence-led cultures in response to shifting and increasing counterterrorism responsibilities, it would be useful to reassess this trend in MI5 and ASIO in several years' time. Doing so would help illuminate whether this trend is continuing, reversing, or meeting some equilibrium. Furthermore, an isolated study on the impact and value of national-level coordination bodies in comparison to service-generated coordination mechanisms may aid in determining the best role for umbrella organizations such as DHS and the Director of National Intelligence. Lastly, and as noted in the introductory chapter, open-source information offers only a partial picture. Resolution on the above matters would be aided by internal audits and review by officials with access to service activities and administration outside of the realm of public discourse.

## APPENDIX      MI5 1995–2011 COUNTERTERRORISM RESOURCE ALLOCATIONS

	International CT	Northern Ireland- related or Domestic CT	Counterespionage	Total Counterterrorism
2011	72	15	4	87
2010–11	72	17	--	89
2009–10	74	15	4	89
2008–09	75	13	3.14	88
2007–08	67	15	≈3	82
2006–07	63	17	3.5	80
2005–06	53	17	7	70
2004–05	52	20	10.2	72
2003–04	42	25	10.7	67
2002–03	32	29	≈11–16	61
2001	25	32	16	57
2000	--	--	--	--
1999	--	--	20	≥ 50
1998	--	--	--	--
1997–98	16.4	19.5	--	35.9
1996	--	--	--	--
1995	--	≈ 50	--	--

Source: U.K. Intelligence and Security Committee, “Intelligence and Security Committee Annual Reports,” *Cabinet Office*, (accessed October 17, 2012) <http://www.cabinetoffice.gov.uk/resource-library/intelligence-and-security-committee-isc-annual-reports>; Data for 2011 is valid through March 2011 and was acquired from the MI5 website: MI5--The Security Service, “Major Areas of Work,” (accessed September 29, 2012) <https://www.mi5.gov.uk/home/about-us/what-we-do/major-areas-of-work.html>; see also Steve Hewitt, *The British War on Terror* (London, England: Continuum Books, 2008), 94. Chart indicates percentage of resources.

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